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COMMISSION ON HUMAN RIGHTS
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# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

## QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Secretary-General

Information submitted by Governments pursuant to Sub-Commission resolution 7 (XXVII) of 20 August 1974

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## INTRODUCTION

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in paragraph 1 of its resolution 7 (XXVII) of 20 August 1974, decided to review annually developments relating to the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested information from Governments, the specialized agencies, the regional intergovernmental organizations and the competent non-governmental organizations in consultative status with the Economic and Social Council. In paragraph 2 of that resolution the Sub-Commission requested the Secretary-General to transmit to it the information referred to in paragraph 1.

2. Pursuant to that resolution, the Secretary-General requested information from all States, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations High Commissioner for Refugees, the Council of Europe, the Intergovernmental Committee for Migration, the International Criminal Police Organization (Interpol), the League of Arab States, the Organization of African Unity, the Organization of American States, as well as non-governmental organizations concerned.

3. The present document contains the replies received from Governments up to 5 June 1991. Any further information received from States will be reproduced as addenda. The information submitted by specialized agencies and intergovernmental organizations and the synopsis of material received from non-governmental organizations in consultative status with the Economic and Social Council will be submitted separately in documents E/CN.4/Sub.2/1991/20 and E/CN.4/Sub.2/1991/21 respectively.

## BAHAMAS

[22 January 1991]
[Original: English]

The Ministry of Foreign Affairs advises that although provision is made in the Constitution of the Commonwealth of the Bahamas for a proclamation of emergency and the consequential detention of persons in the public interest, no such proclamation has ever been promulgated since the achievement of independence on 10 July 1973. In addition, any form of detention or imprisonment is carried out in accordance with existing laws and only occurs where a detainee is in breach of such law. During any such detention or imprisonment, his rights are respected and, in the rare instances where a detainee is the subject of behaviour causing harm to him, the person causing such harm to him is prosecuted.

## BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[28 January 1991]
[Original: Russian]*

1. The legislation in force in the Byelorussian SSR provides far-reaching guarantees for respect of the rights of citizens, including those imprisoned. In the fight against crime, the Republic's law enforcement agencies rely on both the force of law and public pressure. The basic principle unswervingly pursued is that no one may be adjudged guilty of a crime and subjected to punishment except by the sentence of a court. Under Byelorussian law and the international legal instruments to which the Byelorussian SSR is a party, persons subjected to detention or imprisonment of any kind enjoy all fundamental human rights, in particular, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection of the law, without any discrimination; the right to be informed of the reasons or grounds of the arrest or detention; the right to be brought promptly before a court and the right to communicate with legal counsel and to be tried in his presence, as well as the rights not to be compelled to testify against themselves and to be presumed innocent until proved guilty, etc.

2. Serious attention is constantly given in the Byelorussian SSR to guaranteeing and ensuring respect for human rights. This was again made vividly clear in the Declaration on State Sovereignty of the Byelorussian Soviet Socialist Republic, an instrument of fundamental importance adopted by the Supreme Soviet of the Byelorussian SSR on 27 July 1990. The Declaration reaffirms respect for the dignity and rights of persons of all nationalities living in the Byelorussian SSR and emphasizes that the Republic acts in accordance with the principles of the Universal Declaration of Human Rights and other universally recognized instruments of international law. It announces the determination to establish a State based on the rule of law in

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* See document attached.

the Byelorussian SSR. The Declaration proclaims that State sovereignty of the Byelorussian SSR is affirmed in the name of a supreme goal, that of free development and well-being, in order that each citizen of the Republic may live in dignity on the basis of guaranteed individual rights in accordance with the Constitution of the Byelorussian SSR and with its international obligations.

3. Supremacy of the law is the essence of the State based on the rule of law to which we aspire. Legality and justice are a sure path towards the renewal of our society. A legal reform is currently being carried out in the Republic with the aim of reviewing, codifying and systematizing our legislation in the light of new economic conditions and of humanizing and democratizing the life of our society. In this process, primary attention is being given to legal protection of the individual and to strengthening citizens' guarantees for the enjoyment of their political, economic and social rights and freedoms.

4. Drafts of a new Criminal Code and Code of Criminal Procedure have been prepared in the Byelorussian SSR; they are at present being debated and should shortly be adopted. The new Codes will considerably expand the legal guarantees of citizens' rights. Major changes in the Correctional Labour Code and other laws are also under preparation.

5. In 1990, within the framework of the judicial and legal reform under way, changes were made in the Criminal Procedure Code in force in the Byelorussian SSR; in particular, these changes were directed towards strengthening the role of counsel in criminal proceedings and limiting the period of detention of persons under judicial investigation. Persons under judicial investigation in connection with criminal cases may not be detained for longer than two months. This period may be extended to three months. Further extension of the period may be permitted only by reason of the special complexity of a case. Extension of the detention period beyond nine months is permitted in exceptional cases only in respect of persons accused of serious crimes. No further extension of the period is permitted and the detainee must be released immediately.

## CANADA

[1 March 1991]
[Original: English]

1. The Government advises that it has nothing to add to the following response which was provided last year:

2. In follow-up to its previous response of 25 February 1987, the Government of Canada wishes to advise the Secretary-General that on 25 June 1987, Canada ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Subsequently, on 26 January 1990, the Government of Canada made declarations pursuant to articles 21 and 22 of the Convention, recognizing the competence of the Committee Against Torture to consider communications from a State party or an individual that Canada was in violation of any of the provisions of the Convention.

3. Several provisions of the Canadian Charter of Rights and Freedoms are relevant to the resolution in question. The Charter was incorporated into the Canadian Constitution on 17 April 1982, by virtue of the Constitution Act, 1982 (Constitution Act, 1982, c. 11 (United Kingdom)). Section 9 guarantees the right not to be arbitrarily detained or imprisoned and section 10 (c) provides that everyone has the right to have the validity of a detention determined by way of habeas corpus and to be released if the detention is not lawful. As well, section 12 guarantees that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment". Finally, section 7 guarantees the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

4. Anyone whose Charter rights have been infringed may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just within the circumstances (section 24 (1)). Where evidence has been obtained in a manner that infringes or denies a Charter right, it will not be admitted in judicial proceedings if, having regard to all of the circumstances, its admission would bring the administration of justice into disrepute (section 24 (2)). Moreover, where a law is inconsistent with the provisions of the Charter, a court must declare the law to be, to the extent of the inconsistency, of no force or effect (section 52).

5. The use of force by police agencies is regulated by legislative, regulatory and administrative provisions. For example, the Criminal Code of Canada prohibits such practices as assault, both with or without bodily harm (section 245), causing bodily harm with intent to wound a person or to endanger life (section 228), administering a noxious thing (section 229), extortion (section 305) and intimidation (section 381).

6. Any member of the Royal Canadian Mounted Police who fails to respect the rights of all persons, or who abuses his or her authority in the performance of duties, is, in addition to being liable to criminal penalties, guilty of a Code of Conduct offence and liable to punishment ranging from a simple reprimand to dismissal from the force (An Act to amend the Royal Canadian Mounted Police Act, S.C. 1986, c. 11, ss. 37, 41 (1), 43 (1) and 45. 12 (3)).

7. There also exist special provisions governing the Correctional Service of Canada to protect against abuses in prisons. These provisions include the following measures:

(a) Section 3.1 of the Penitentiary Service Regulations, promulgated on 17 March 1988, specifically prohibits every member of the Service from administering, instigating, consenting to, or acquiescing in the cruel, inhuman or degrading treatment or punishment of an offender who is or has been incarcerated in a penitentiary;

(b) Policies aimed at controlling the use of force by personnel require that staff refrain from abusive conduct towards inmates, including the infliction of corporal punishment and personal injury. Whenever force is permitted to be used in order to handle inmates, it may not be used as punishment or for disciplinary purposes (Commissioner's Directive ("CD") no. 605);

(c) Staff may be held criminally and civilly liable for any excessive use of force. In addition, the Code of Discipline requires staff to follow the legislation, regulations and policies of the Correctional Service, and enforces this requirement by means of a system of service offences. Any employee of the Correctional Service who disobeys these requirements may be subject to disciplinary action ranging from a reprimand to dismissal (CD no. 060), in addition to any other criminal or civil liability.

## CHAD

[5 February 1991]
[Original: French]

1. The question raised by the Sub-Commission on Prevention of Discrimination and Protection of Minorities has two aspects: the illegal or arbitrary form of detention and the legal form carried out with a view to judicial proceedings.

2. The first aspect essentially involves political detainees who are subjected to physical violence or degrading and humiliating treatment. This form of detention is characteristic of an authoritarian and dictatorial system in which the least expression of an idea or opinion is regarded as opposition. That was the situation in this country for a number of years, arousing indignation and protest at home and abroad (humanitarian organizations such as Amnesty International). There was concrete and irrefutable proof that people had disappeared and been subjected to the most inhuman torture, leaving several inmates of jails disabled. The dictatorship and its repressive system were swept away when the Mouvement Patriotique du Salut (MPS) came to power on 1 December 1990. A wind of freedom has just blown through Chad: democratic pluralism.

3. As to the second aspect of the question, which concerns the legal form of detention, it is regulated by decree No. 371/77/CSM/MJ dated 9 November 1977 governing penal establishments in Chad. All persons who are imprisoned are categorized by age, sex and offence. They have rights (contact with the outside world, their families, etc.), have access to hospital treatment, to academic education and vocational training and to all kinds of recreational activities organized in prison, which vary from one establishment to another.

4. Persons detained under the ordinary law also have obligations. Penal labour, for example, is compulsory for convicted persons, depending on their physical capacity. Remand prisoners, i.e. those who have not yet been tried, are treated less strictly than those who have been convicted. Being presumed innocent until found guilty, they cannot be subjected to the same conditions of detention as those who have already been convicted.

5. All these rules are followed in Chad's prison system in order to preserve and guarantee the rights of the Chadian citizen.

6. There are no political detainees in Chad at present, and persons detained under the ordinary law are free to choose their own defence counsel.

COLOMBIA

[15 February 1991]
[Original: Spanish]*

Right not to be arbitrarily arrested or detained

1. Article 23 of the Colombian Constitution states that "no one may be molested in his person or his family, or imprisoned or arrested, or detained, nor may his home be searched except by virtue of a written order from the competent authority in the form prescribed by law and for a reason previously specified by law".

2. This provision embodies the institution of habeas corpus, designed to ensure freedom of the person from illegal detention, forced entry into the home and other arbitrary measures on the part of the authorities.

3. Article 4 of the Code of Criminal Procedure states that: "Everyone has the right to freedom. There can be no deprivation of freedom except for the reasons and under the conditions previously prescribed by law".

4. Consequently, no one may be arrested or detained except in the cases specified by law. The arrest has to be decided on and carried out by the competent officials. Officials ordering an arbitrary detention are responsible for their decision.

5. Anyone who is, nevertheless, detained arbitrarily can apply for a writ of habeas corpus.

6. Article 454 of the Code of Criminal Procedure states that: "Habeas corpus is a remedy designed to protect the freedom of the individual against any arbitrary act by any authority tending to restrict that freedom". Articles 455 to 460 of the Code of Criminal Procedure establish a summary procedure for the exercise of this right and specify the authorities competent in the matter and the measures necessary to ensure that it is fully respected.

7. In pursuance of decree 1038 of 1984, which notes the breakdown of law and order and proclaims a state of siege throughout the national territory, various decrees have been adopted with reference to habeas corpus, such as Nos. 182/88, 2790/90 and 0099/91. These texts, which do not impair or abolish this remedy, contain provisions on the procedure for applying for it and on the competent authority, without prejudicing the safeguards enjoyed by the persons concerned.

8. It should be noted that the legislation on the state of siege is subject to constitutional approval by the Supreme Court of Justice, and that this is accordingly the case with decrees Nos. 2790/90 and 0099/91. Once the Court has decided whether they are constitutional, a photocopy of its decision can be sent to the Under-Secretary-General for Human Rights if he thinks it necessary.

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* See document attached.

Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and right to be treated with humanity and with respect for the inherent dignity of the human person

9. Under article 16 of the Constitution it is the State's duty to protect the life, honour and property of all persons resident in Colombia. Article 23 establishes the right of the individual not to be molested in his person or his family.

10. Article 2 of the Code of Criminal Procedure reads as follows: "Recognition of human dignity: Any person suspected of having committed a punishable act is entitled to be treated with the respect due to the inherent dignity of the human person".

11. To guarantee that these principles are applied, the Government Procurator's Office has been made responsible for the defence of human rights. According to article 122, paragraph 3, of the Code of Criminal Procedure, the Government Procurator's Office shall scrupulously perform the function of "ensuring that human rights are protected in penal, judicial and police establishments and in psychiatric institutions, so that the inmates are treated with the respect due to the inherent dignity of the human person, are not subjected to cruel, degrading or inhuman treatment and receive prompt medical and hospital care".

12. These fundamental principles have been kept in the provisions governing the state of siege.

13. Under article 279 of the Criminal Code, physical or moral torture is an offence and anyone guilty of it is liable to a penalty of one to three years' imprisonment, unless the act in question constitutes an offence carrying a greater penalty.

14. Decrees 2790/90 and 0099/91, adopted in connection with the state of exception, impose in article 8 a penalty of 15 to 25 years' imprisonment for acts of coercion, torture, homicide or bodily injury committed against officials, representatives of the authorities, political or trade union leaders, journalists, teachers or any other persons resident in the national territory by reason of their convictions or political opinions, whether or not they are those of a particular party.

15. The treatment and rights of detainees are covered not just by the national Constitution and legislation but also by international treaties. On 10 April 1985 Colombia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984. Having been approved by Act No. 70 of 1986 and having been the subject of an instrument of ratification deposited on 8 December 1987, the Convention came into force for Colombia on 7 January 1988.

Right to equal protection of the law without any discrimination

16. Title III of the Constitution entitled "Social rights and guarantees" establishes that all persons have equal rights without any discrimination. In

application of this constitutional principle, article 8 of the Criminal Code, entitled "Equality before the law", states that the criminal law shall apply equally to all persons, irrespective of any considerations other than those set forth in the law itself. By these considerations is meant the status of the person concerned, i.e. whether he is or is not a public official.

17. Generally speaking, the provisions of the criminal law relate to unspecified persons, i.e. to any citizen. However, in the case of offences by public officials, they are identified, because such officials bear greater responsibility. Depending on the circumstances, they may be the subject of both criminal proceedings and disciplinary ones, because they hold positions of public trust. Thus article 20 of the Constitution states that "individuals are answerable before the authorities only for offences against the Constitution and the law. Public officials are answerable on the same grounds, and also when they exceed their functions or neglect to perform them".

18. These principles are preserved in the provisions adopted in connection with the state of siege. The latest decrees, entitled "Regulations relating to the defence of justice", reaffirm that detainees have an equal right to protection.

19. Thus, as an example, under article 71, paragraph 2, of decree 0099/91, when the Government Procurator's Office is informed of the arrest or apprehension of a person, it is required to send a representative immediately to the place of detention in order to establish the general condition of the person concerned and record it in the file. If he finds any irregularity, he is required to inform the local police authority without delay and to open an enquiry into the matter or arrange for one to be opened.

20. Under the decrees in question, the Government Prosecutor's Office retains the other functions entrusted to it under the Constitution and the law, such as defending detainees' human rights and ensuring that they are given protection and that the rules of procedure are complied with.

Right to be informed of the reasons or grounds for arrest or detention and to communicate with a lawyer

21. Articles 23 and 26 of the Constitution referred to above embody the principle of legality, which has to be applied as soon as a person is taken into custody.

22. Thus, under article 403 of the Code of Criminal Procedure, any person arrested must immediately be informed of: the reasons for his arrest, which must be recorded in writing, together with the name of the official who has ordered the arrest; his right to contact a lawyer and to designate the person to be informed of his arrest, who must immediately be informed by the official responsible for the arrest; his right, in the case of a preliminary investigation, to make a statement of his own free will before the examining magistrate concerning the charges against him, together with his right to refuse to reply to the accusations against him, any statement he does make being taken only in the presence of his lawyer.

23. Article 410 of the Code of Criminal Procedure states that if the grounds for the arrest cease to exist, the official who issued the arrest warrant is obliged to cancel it immediately or incur a charge of misconduct, without prejudice to his possible criminal liability.

24. Under article 422, upon the expiry of the period allowed for taking the detainee's statement and determining his legal status, the director of the place of detention must immediately ask the judge to issue an order for his release or a warrant of commitment. If within the next 12 hours, he does not receive a dated warrant of commitment stating the nature of the charge that gives rise to it, the person concerned must be released, provided there is no warrant for his arrest or commitment in another matter.

25. The decrees adopted during the state of siege do not derogate from these principles; they modify some of them, but solely on points concerning time-limits, procedure or the competent authority. Otherwise these texts would be unconstitutional, and the Supreme Court of Justice, which is responsible for approving such texts, would declare them so.

26. Thus, article 26 of the latest decree, Decree No. 0099/91, respects the detainee's rights since it states that anyone who is arrested must be informed by the judicial police officers of the grounds for the arrest, his right to designate a person to be informed and his right to make a statement of his own free will.

Right to be brought promptly before a court and to be tried within a reasonable time

27. Article 26 of the Constitution states the principle of "due process", according to which persons charged with a punishable offence have to be tried before the competent court in accordance with all the forms that apply in each case. Violation of this provision would lead to nullity on grounds of unconstitutionality.

28. According to the Code of Criminal Procedure, the person concerned is regarded as a defendant from the time when he makes his statement or is declared in default (article 125).

29. The judge has to hear his statement as soon as possible, and within three days from the date when he was placed at his disposal. This period is extended to six days if there are more than two detainees in the same case and they were arrested on the same day (article 412).

30. After the person concerned has made his statement, the judge has five days to rule on his legal status and order either security measures or his immediate release. It should be noted that the arrest has to be ordered by a judge when there are grounds for it, unless the person is caught flagrante delicto or quasi flagrante delicto.

31. In the latter case, obviously, no warrant is issued, and it is therefore the judicial police, some other authority, or an individual who can proceed to

arrest the offender. They must bring him immediately, or within a reasonable period given the distance involved, before the competent judge so that he may open examination proceedings.

32. The latest decrees on the state of siege modify some aspects of this procedure, but the modifications relate only to the offences covered by these texts.

33. Thus, article 25 of Decrees 2790/90 and 0099/91 states that when during the pre-trial proceedings, organs of the judicial police other than police officers or agents of the DIJIN, the SIJIN, National Police, or the DAS make an arrest, the person concerned may not be held by them for more than 48 hours.

34. The arrest must be notified immediately by the organs in question to the person designated by the detainee, to the Government Procurator's Office and, through the local police authority, to the examining magistrate responsible for supervising the interrogation.

35. When it is civil officials who make the arrest, they have five days from the date of the arrest to bring the person concerned before the competent examining magistrate and to place the original file before him.

36. Once the person concerned has been made available to him, the examining magistrate receives his statement and has to determine his legal status within 10 days, a period which can be extended to 20 days if there are more than five suspects.

37. In any event, the Government Procurator's Office performs its supervisory functions from the time of arrest.

Right of defence

38. The Colombian Constitution sets forth the right of defence in article 26, which lays down four safeguards. Under Colombia's domestic legal system, the safeguards for the defence are objective, since they require a previous legal decision regarding the wrongfulness of the act and regarding the circumstances in which the proceedings are conducted; they are also subjective, since the person concerned can put forward facts, ideas or different interpretations which may disprove or diminish his guilt, or place the offence in a different category.

39. In addition, the idea of the right of defence was expressly introduced as such into Colombian law by Act No. 74 of 31 December 1968, approving the international covenants adopted by the United Nations General Assembly in New York on 16 December 1966. One of these instruments, which, under the Colombian system, has constitutional force, is concerned with the protection of civil and political rights on the basis of recognition of human dignity and the principles of liberty and equality that derive from it.

40. The right of defence is thus embodied in principles which were already stated in articles 10 and 11 of the Universal Declaration of Human Rights,

adopted by the United Nations in 1948 and supported by Colombia. These principles have been part of the Colombian procedural system for a very long time. Thus:

The accused can have the services of a defence counsel appointed by the Government Procurator's Office free of charge (article 122, paras. 1, 3 and 4);

He may, if he sees fit, appeal against decisions by the judge, ask for evidence and contest it (article 126);

If he cannot afford to employ counsel, the State will provide one for him (articles 131, 132, 135, 138);

He is not required to sign any instrument or record (article 156), except in the case provided for in article 417;

He can request an extension of time-limits if that appears to him to be in his interest (article 169);

If he is in detention, all the judge's decisions must be notified to him personally (articles 176, 472);

He can challenge any decision by the judge or withdraw any appeals he may have entered (articles 205, 206, 209, 211);

If he is not satisfied with the decision of the higher court, he can use the remedies available to apply to the Supreme Court of Justice in certain cases for judicial review of the law or the facts (articles 219, 232);

In doubtful cases, the decision must be in his favour (article 248);

As between the law in force at the time of the offence and any subsequent law, he is entitled to have the more favourable one applied to him (article 5);

His confession, if it is qualified and there is no evidence to the contrary, has to be accepted as the absolute truth (articles 248, 300);

Violation of the right of defence constitutes a ground for nullity (article 305, para. 3);

Statements by the person concerned to judicial police officers have no value unless all the conditions set forth in article 344 are complied with, in particular with regard to his questioning;

He can ask to make a statement (article 378), which he can add to as often as he wishes (article 383), without being required to do so upon oath unless he accuses third parties (article 379);

The person concerned cannot be placed in detention unless the statement he has made of his own free will reveals sufficient evidence of his responsibility (article 408);

No warrant of commitment can be issued against the person concerned until he has been heard or declared in default (article 411);

His statement has to be taken within three days of his arrest (article 412);

Any security measure has to be recorded in an interlocutory order so that he can contest it (article 414);

If it is established that the person concerned acted in circumstances which mean that the act was not unlawful (self-defence or state of necessity) or which exclude the possibility of his guilt, he cannot be deprived of his freedom at any time;

He is entitled to be released in all the cases covered by article 439;

Apart from the evidence he is entitled to ask for at the pre-trial stage, he can ask for other evidence during the trial, even with a view to having it given at a public hearing (articles 477 to 492);

If new evidence submitted during the trial indicates that the charges come under another category of offence, the person concerned may receive a more favourable judgement, in the light of what has been put forward and proved during the trial (articles 501 to 503);

The person concerned may participate throughout the trial and must attend the public hearing if he is deprived of his freedom (article 497);

Criminal proceedings are public (article 9: Principle of public hearings), in order to avoid secret dealings and to permit effective exercise of the right of defence, adequate presentation of the evidence and due opportunity to contest it, and particularly in order to enable the person concerned to avail himself of the existing legal remedies, etc.

41. Decree 0099/91 provides for the accused's right to the assistance of a lawyer and the compulsory intervention of the Government Procurator's Office to ensure that this right is respected. Article 37 of the decree recognizes the right to have access to the file and to make changes in it, with the obligation to maintain confidentiality with regard to action by the accused and his defenders. According to the same article, decisions affecting the accused's liberty may in no case by kept secret.

42. The representative of the Government Procurator's Office is entitled to be supplied with a copy of any document in the proceedings.

43. The person concerned, like his defence counsel, can ask for evidence in accordance with article 45 of the same decree. He is also entitled to appeal against the decisions given if he sees fit, to apply for a writ of habeas corpus, etc.

Right to have the free assistance of an interpreter if he cannot understand or speak the language used in court

44. Under article 149 of the Code of Criminal Procedure, all proceedings in a trial have to be recorded in writing in Spanish. Anyone unable to express himself in that language is entitled to the services of an interpreter. These services are provided by so-called officers of the court or experts. The position of expert is a public office; the services are provided free of charge and the appointment has to be accepted (arts. 267 and 268).

Right not to be compelled to testify against oneself or to confess guilt

45. This right is expressly embodied in article 25 of the Constitution, according to which: "No one shall be required to testify against himself or against members of his family within the fourth degree of kindred or his relations by marriage within the second degree in proceedings relating to any offence".

46. In addition, article 20 of the Code of Criminal Procedure exempts any person from the obligation to report an offence or lodge a complaint if to do so would involve the person himself or be to the detriment of his spouse, permanent companion, any member of his family to the fourth degree or any relation by marriage to the second degree, or to report punishable offences which have come to his knowledge in the performance of functions in which he is legally bound to observe professional confidentiality.

47. Article 286 of the Code of Criminal Procedure also refers to the exemption of the above-mentioned persons from the duty to make a statement and specifies that this right must be brought to the attention of any suspect before interrogation and any person called upon to testify.

Right to a fair and public hearing by an independent and impartial tribunal

48. The principles of legality and due process (before a pre-existing competent authority) are set forth in articles 23 and 25 of the Constitution. Article 78 of the Code of Criminal Procedure seeks to safeguard and develop these principles, stating that when in the district where the trial is being held there are circumstances liable to jeopardize the impartiality and independence of the administration of justice, it may be decided to transfer the trial to another town or to entrust it to another court, as appropriate.

49. In addition, under article 11 of the Criminal Code, no one can be tried by a special judge or court set up after the offence was committed or in violation of the forms prescribed by law for each particular trial.

50. It should be noted here that, under article 55 of the Constitution, the various powers of the State (legislative, executive and judiciary) are independent of each other, but work together in harmony to achieve the objectives of the State. This principle guarantees independence in the administration of justice and strengthens its impartiality.

Right to be presumed innocent until proved guilty

51. Article 3 of the Code of Criminal Procedure firmly states that any person accused of an offence is presumed innocent until found guilty by an enforceable judgement.

52. The punishment of the offence is embodied in the sentence. The sentence is the culmination of the judicial procedure, and until it has been passed it is not possible to apply the measures of social control which are the aim of the criminal law. Judicial procedure will always be based on the above-mentioned presumption of innocence.

53. In addition, the judge, when giving his judgement, must, when there is room for doubt, rule in favour of the defendant (Code of Criminal Procedure, art. 248).

Right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed and not to be given a heavier penalty than the one that was applicable at the time when the criminal offence was committed.

54. This right is established in articles 23 and 26 of the Constitution referred to above.

55. Article 10 of the Criminal Code states that no one may be convicted of an offence which was not expressly defined as punishable by the criminal law at the time when it was committed, nor have imposed on him a penalty or security measure that did not apply at the time. The Code of Criminal Procedure contains provisions intended to develop this principle, as has already been described. Thus, under article 5 of the Code of Criminal Procedure, as between the law applicable at the time when the offence was committed and any subsequent law, the person concerned is entitled to have the more favourable one applied to him.

* * *

56. This incomplete review of some provisions of Colombian law stating the fundamental rights of detainees is designed to highlight the Government's efforts to establish procedural machinery which will guarantee these rights.

57. The Government has submitted a proposal for reform of the Constitution to the Constituent Assembly which has just been convened. The members of the Assembly, who are elected by the people, represent the various political trends. The ethnic minorities are also represented, as are guerrilla groups which have recently been re-integrated into civilian life.

58. Title II of the proposed text expressly provides for fundamental individual rights, such as the inviolability of human dignity, the principle of equality, legality, impartiality and independence, the right of defence, the right to liberty and security and habeas corpus. Chapter 2 goes still further, introducing social, economic and cultural rights as constitutional principles; chapter 3 defines collective rights and chapter 4 the duties and responsibilities of the State.

59. The Constituent Assembly will complete its work by 5 July 1991. The Government of Colombia undertakes to inform the Under-Secretary-General for Human Rights about the constitutional text that is finally adopted.

60. As can be seen, the Colombian Government is sparing no effort to strengthen the administration of justice, the defence of human rights and pacification of the country and to extend the areas of democratic participation.

## CUBA

[20 March 1991]
[Original: Spanish]

1. The Constitution of the Republic of Cuba stipulates that all citizens have the same rights and duties (art. 40), a principle which is put into practice. In addition, articles 57 and 58 of the Constitution stipulate that no person may be detained except in the circumstances, according to the procedure and with the guarantees prescribed by law. The personal integrity of detainees or prisoners is inviolable.

Article 58 mentions specifically some of the rights provided for in resolution 7 (XXVII) currently under study, in providing that "no person may be charged or sentenced except by a competent court, on the basis of laws in existence at the time of the offence, and in accordance with the procedures and guarantees provided for in those laws.

Every accused person shall be entitled to a defence.

No violence or coercion of any kind shall be used against persons to force them to make a statement.

Any statement obtained in contravention of this principle shall be without legal effect and those responsible shall be liable to the penalties established by law."

2. The retroactive application of criminal laws, which is carried out only when the results are favourable to the person accused or under sentence, is governed by article 60 of the Constitution of the Republic.

3. The Code of Criminal Procedure in force in Cuba establishes the principle that the accused is presumed innocent until found guilty. The offence must be proved independently of the testimony of the accused, or of the spouse or family of the accused to the fourth degree of consanguinity or second degree of affinity (art. 3).

4. Title IV, Chapter I, of the same Code deals with arrest, listing the specific circumstances or reasons constituting grounds for a person's arrest. In addition, Chaper II of the same Title deals with all matters concerning the "custody of the accused", stipulating that the police may not hold any person in custody for more than 24 hours without bringing him before the examining magistrate, who shall release him or place him at the disposal of the Government Procurator within 72 hours. The Government Procurator, in turn,

must take the appropriate action within 72 hours of receiving the results of the preliminary examination. Where pre-trial detention is ordered or another of the custodial measures authorized by this Code is imposed, the proceedings are referred to the court, which confirms the finding of the Public Prosecutor, declares it to be groundless or replaces it with another ruling. This decision cannot be appealed (art. 245).

5. Once this ruling has been made, the proceedings are referred to the examining magistrate, who proceeds to notify the accused of the court's decision, at the same time informing him of his right to appoint a defence counsel (art. 247).

6. Article 249 of the Code provides that, as soon as the court has handed down its ruling, the accused is party to the proceedings and may submit evidence.

7. The accused is informed of the charges against him before being placed at the disposal of the Government Procurator by the examining magistrate, which must be done within 72 hours, as already explained. At the same time, he is informed of his right to make a statement, if he so wishes, which he may do whenever and as often as he wishes.

8. The accused is free to select a defence counsel and, if he does not do so, is provided with counsel appointed by the court, in accordance with the provisions of article 281. The trial may not take place without the presence of the defence counsel.

9. Cuban law establishes the principle of public trial and stipulates that trials must be held in public unless considerations of public decency, public order or State security make it advisable to hold them in camera (art. 305 of the Code of Criminal Procedure).

10. An accused who does not speak Spanish must testify and be questioned through an interpreter (arts. 164 and 192 of the Code of Criminal Procedure).

11. These norms are not only embodied in our legislation, but their effective and strict application is ensured by all the Cuban authorities, which take appropriate measures if any of them are infringed.

12. Cuba respects human rights and not only observes the principles referred to in resolution 7 (XXVII), but ensures compliance with them, bringing the full weight of the law to bear on offenders, as described above.

## DOMINICA

[29 January 1991]
[Original: English]

The Ministry of External Affairs of the Commonwealth of Dominica is pleased to state that there are no infringements of the human rights of any person or persons presently detained by the Government of the Commonwealth of Dominica.

# EGYPT

[28 March 1991]
[Original: Arabic]*

1. The information below has been taken from the very detailed reply given by the Government at the request of the Special Rapporteur on States of Emergency; it includes and supplements the information provided by the Government in this report.

2. The Egyptian Constitution lays down the general principles and rules governing this question. Detailed rules in this regard were subsequently incorporated in Egyptian legislation, which makes provision for two types of detention:

(a) Detention on the basis of a charge relating to the commission of an offence which is punishable in accordance with the provisions of the Egyptian Penal Code or special penal legislation. The scope of this detention, as well as the relevant regulations, are governed by the provisions of the Egyptian Code of Criminal Procedure;

(b) Detention during states of emergency which are proclaimed in the country in order to avert a threat to public order and security. The scope of this detention, as well as the relevant regulations, are governed by the provisions of the Egyptian Emergency Act.

The rights of detainees and prisoners, as set forth in the Egyptian Constitution

3. The following is enshrined in the Egyptian Constitution:

(a) Equality and prohibition of discrimination on grounds of sex, origin, language, religion or belief. All citizens are equal before the law and in regard to their public rights and duties (art. 40);

(b) The inadmissibility of arrest, search, imprisonment or any restriction of freedom unless, in the interests of an investigation, such is required under the terms of an order issued by the competent judge or the Department of Public Prosecutions (art. 41);

(c) Any person who is arrested or imprisoned or whose freedom is restricted must be treated in a manner conducive to the preservation of his human dignity and no physical or mental harm may be inflicted upon him (art. 42);

(d) No person may be detained or imprisoned in places other than those subject to the legal provisions governing prisons (art. 42);

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* See document attached.

(e) Any statement which is proved to have been made under the influence or threat of physical or mental harm is considered null and void (art. 42);

(f) Any infringement of the public rights and freedoms guaranteed by the Constitution or the law constitutes an offence and criminal or civil proceedings in connection therewith are not statute-barred. The State guarantees compensation for such infringement (art. 57);

(g) Every person who is arrested or detained must be informed immediately of the reasons for his arrest or detention and has the right to communicate with any person from whom he may wish to seek assistance. He must be promptly notified of the charges against him and may appeal in court against the measure taken to restrict his freedom. A judicial decision must be taken thereon within a specified period (art. 71);

(h) The accused is presumed innocent until proved guilty at a judicial hearing in which his right to defend himself is safeguarded. Every person charged with a felony must have a lawyer to defend him (art. 67);

(i) There is no crime or penalty except as defined by law. Penalties may be inflicted only under the terms of a court order and only in respect of acts committed subsequent to the date of entry into force of the legislation pertaining thereto (art. 66);

(j) The right of defence, in person or by proxy, is guaranteed and legal provision has been made to ensure that persons lacking financial means are able to resort to the courts in defence of their rights (art. 69).

4. It is evident, therefore, that the Egyptian Constitution has laid down the general framework and foundations which the Egyptian legislature must respect when promulgating any legislation relating to the above-mentioned constitutional principles. All these principles are in conformity with the provisions of articles 2, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976 and to which Egypt acceded under the terms of Presidential Decree No. 536 of 1981, as published in the Official Gazette on 15 April 1982.

The rights of detainees and prisoners, as set forth in the Egyptian Penal Code

5. The Egyptian Penal Code guarantees various rights of persons who are detained or imprisoned. Such persons enjoy legal protection in so far as any violation of their rights, as recognized in the provisions of the Egyptian Constitution and the Penal Code, constitutes a criminal offence.

6. Article 5 of the Penal Code incorporates the general legal principle that offences must be punished in accordance with the legislation in force at the time of their commission. However, if legislation that is more favourable to the accused is promulgated after the commission of the offence and before final judgement has been handed down in connection therewith, it is applied instead of the earlier legislation. The Penal Code designates the following violations as criminal offences:

(a) Extortion of a confession from an accused person through torture ordered or inflicted by a public official. Under the Code, this is punishable by hard labour or imprisonment for a term of 3 to 10 years. If the victim dies, the offender is liable to the penalty prescribed for murder (art. 126);

(b) The imposition on a convicted person, by a public official, of a punishment more severe than that to which the said person has been legally sentenced, or a punishment to which he has not been sentenced, is punishable by imprisonment (art. 127);

(c) The use, by a public official acting in his capacity as such, of violence incompatible with human dignity or likely to cause physical pain, is punishable by imprisonment or a fine (art. 129);

(d) The arrest, detention or imprisonment of any person without authorization from a competent judge, or in circumstances other than those in which such is permitted by law, is punishable by imprisonment or a fine (art. 280);

(e) Any illegal arrest made by a person unlawfully wearing the uniform of a public official, acting in an unauthorized capacity or presenting a spurious order allegedly issued by the authorities is punishable by imprisonment. The penalty is a term of hard labour if such arrest is accompanied by threats or physical torture (art. 282);

(f) In this connection, Act No. 396 of 1957, concerning the organization of prisons, stipulates that it is a criminal offence, punishable by imprisonment, for a public official to confine a person in any way deprived of his liberty at a location other than one of the prisons or places specified in the Act (art. 91 bis of the Act).

7. The acts referred to in paragraph 6 above constitute criminal offences under the Egyptian Penal Code. This is in conformity with the provisions of articles 41 and 42 of the Egyptian Constitution, articles 10 and 14 of the International Covenant on Civil and Political Rights, articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the principles contained in the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners.

The rights of detainees and prisoners, as set forth in the Egyptian Code of Criminal Procedure

8. With respect to the Egyptian Code of Criminal Procedure, the following apply:

(a) No one may be arrested or detained except by order of the authorities vested with legal competence in that respect. Any person who is arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be harmed physically or mentally (art. 40);

(b) No one may be imprisoned except in penal establishments intended for that purpose and no prison warden may admit any person into such establishments except by written order of the competent authority, nor may such person be detained therein for a period longer than that specified in the said order (art. 41);

(c) Every prisoner has the right to submit a written or verbal complaint to the prison warden, who must accept such complaints and transmit them to the Department of Public Prosecutions, after recording them in the relevant prison register (art. 43);

(d) Any member of the Department of Public Prosecutions and any President or Vice-President of a court of first instance or appeal is entitled to visit the prisons situated within their areas of jurisdiction in order to ascertain that no one is being detained illegally. They also have the right to inspect the prison registers, arrest warrants and confinement orders and to contact any prisoners with a view to hearing their complaints (art. 42);

(e) Everyone who is arrested or held in precautionary detention must be informed immediately of the reasons for his arrest or detention. He has the right to communicate with any person whom he wishes to notify of what has happened and is entitled to avail himself of the services of a lawyer (art. 139);

(f) In cases of flagrante delicto or cases involving offences punishable by more than three months' imprisonment, criminal investigation officers may arrest a suspect found at the scene of a crime. In such cases, they must immediately take a statement from the arrested suspect. If the latter is unable to establish his innocence, he must be brought before the competent office of public prosecutions within 24 hours. The office of public prosecutions must question the suspect within 24 hours and subsequently order his detention in custody or release (arts. 34 and 36);

(g) A detention order issued by the Department of Public Prosecutions is valid only for a period of four days after the arrest of the accused. If the Department wishes to extend a period of precautionary detention, it must submit the case file to the judge of summary jurisdiction, who issues an appropriate order after listening to the statements of the accused and the Department of Public Prosecutions. The precautionary detention may be extended for a period or successive periods, provided that the total period of detention does not exceed 45 days. If the investigation has not been completed, the period of precautionary detention may be extended by the Misdemeanours Court of Appeal, meeting in chambers, after hearing the statements of the accused and the Department of Public Prosecutions. The period of detention may be extended for successive periods of 45 days, up to a maximum of six months. Failing such extension, the suspect must be released unless he has been notified, before the expiration of his period of detention, that he is to be referred to the competent court. In all cases, the Department of Public Prosecutions, the judge of summary jurisdiction and the Misdemeanours Court of Appeal may order the release of the suspect, with or without bail, at any time (arts. 201, 202, 203, 204 and 205);

(h) Statutes of limitation do not apply to public prosecutions in respect of some offences, including torture with a view to extracting a confession or the infliction of a punishment more severe than the penalty to which the accused person has been sentenced, which are designated as criminal offences in articles 126 and 127 of the Penal Code;

(i) Except in cases of flagrante delicto or where there is a compelling reason to fear that evidence might be lost, a person suspected of a felony must not be interrogated or confronted with other suspects or witnesses until his lawyer, if he has one, has been invited to be present. The lawyer is granted access to the case file on the day preceding the interrogation and the accused must under no circumstances be separated from his legal counsel during the examination (arts. 124 and 125);

(j) Trials must be held in public, unless the court decides to hold some or all of its hearings in camera in the interests of public order or morality (art. 268);

(k) Persons accused of offences punishable by imprisonment must attend in person. In cases involving other offences and misdemeanors, they may appoint a representative to present their defence, without prejudice to the court's right to order their attendance in person (art. 237);

(l) The trial begins with the presentation of the indictment against the accused, after which the court hears statements from witnesses for the prosecution, witnesses for the defence and experts, if any. The accused and the other opposing parties have the right to cross-examine witnesses, to recall witnesses for the defence or to call other witnesses for the defence. The court then hears the final pleas of the opposing parties, the accused being the last to speak (arts. 271, 272, 273, 274, 275 and 293);

(m) Any statement by the accused or witnesses which, in the court's opinion, has been made under coercion or threat is considered null and void. Ascendants and descendants of the accused, as well as relatives by blood and marriage to the second degree and his spouse, even after the dissolution of the marriage, may decline to testify against him except in cases involving offences committed against, or reported by, any of them (arts. 286 and 302);

(n) In cases involving felonies, the lawyer must appear with the accused, regardless of whether he was appointed by the examining magistrate, the Department of Public Prosecutions, the President of the Criminal Court or the accused himself. A lawyer who is absent, without a legitimate excuse, and fails to designate a representative is liable to a fine, without prejudice to any disciplinary proceedings (art. 375);

(o) The language of the courts is Arabic. The statements of any opposing parties or witnesses who are not familiar with that language are heard through a sworn interpreter (art. 19 of the Judicial Authority Act No. 46 of 1972).

Important Note: In the Egyptian legal system, the Department of Public Prosecutions is a judicial body and, as stipulated by the Judicial Authority Act No. 46 of 1972, its members cannot be removed from office.

The rights of detainees and prisoners, as set forth in the Egyptian Emergency Act

9. Under Egyptian law, the President of the Republic is empowered to proclaim a state of emergency, if security or public order in the country are threatened, on the terms and conditions laid down in Act No. 162 of 1958, as amended by Act No. 37 of 1972, Act No. 164 of 1981 and Act No. 50 of 1982.

10. When the state of emergency has been proclaimed and approved by the People's Assembly, the President of the Republic is empowered to impose restrictions on freedom of assembly, movement and residence and to order the arrest of suspicious persons and persons who pose a threat to security.

11. Article 3 bis of the Act recognizes the following rights of persons who suffer detriment as a result of the above-mentioned provisions relating to arrest and detention:

(a) Anyone who is arrested or detained must be informed immediately of the reasons for his arrest or detention and has the right to contact any person whom he may wish to notify of what has happened. He is also entitled to avail himself of the services of a lawyer;

(b) The detainee must be treated in the same way as a person held in precautionary detention;

(c) The detainee, and any other persons concerned, has the right to lodge a complaint, without payment of any charges, with the Higher State security court if he is not released within 30 days from the date of issue of the arrest warrant;

(d) The Court must hand down a substantiated decision on the complaint within 15 days from the date of its submission, failing which the detainee must be released immediately;

(e) Any person whose complaint has been rejected has the right to submit a new complaint 30 days after the rejection of his previous complaint;

(f) The Minister of the Interior has the right to appeal against a release order issued by the court. Such appeal must be heard, within 15 days of its submission, by another division whose decision is final (art. 3 bis added to Act No. 60 of 1968, as amended by Act No. 37 of 1972, Act No. 164 of 1981 and Act No. 50 of 1982);

(g) Lower State security courts, established within the area of jurisdiction of each court of first instance and presided over by one of the latter's judges, are competent to hear cases involving offences punishable by imprisonment and/or a fine. The President of the Republic is empowered to appoint two officers as additional members of such courts;

(h) Higher State security courts, established in the area of jurisdiction of each court of appeal and presided over by three of its justices, are competent to hear offences punishable by a criminal penalty, as well as other offences specified by the President of the Republic. Two officers may be appointed as additional members of such courts by order of the President of the Republic;

(i) Actions brought before these courts are instituted by members of the Department of Public Prosecutions, who are vested with the powers of examining magistrates;

(j) These courts follow the procedures laid down in the legislation in force in regard to the hearing and judgement of cases and enforcement of the sentences handed down.

Egypt's accession to international instruments in this field

12. The provisions of the Egyptian Constitution are in full conformity with international human rights instruments, which were a principal source for the drafters of the Constitution.

13. Egypt has played a prominent role in this field, as illustrated by its accession to most of the international conventions on human rights which have been adopted by the United Nations. Egypt's international participation in this field is exemplified by the following:

(a) Egypt acceded to the International Covenant on Civil and Political Rights under the terms of Presidential Decree No. 536 of 1981, published in the Official Gazette No. 15 on 15 April 1982;

(b) Egypt acceded to the International Convention on the Elimination of All Forms of Racial Discrimination under the terms of Presidential Decree No. 369 of 1967, published in the Official Gazette No. 45 on 11 November 1972.

(c) Egypt acceded to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the terms of Presidential Decree No. 154 of 1986, published in the Official Gazette No. 1 on 7 January 1988.

14. Following the promulgation of the above-mentioned presidential decrees and their publication in the Official Gazette, those conventions acquired the force of law in accordance with article 151 of the Constitution.

## MEXICO

[6 February 1991]
[Original: Spanish]

1. The Government reports that a number of changes have been made to the Federal Code of Criminal Procedure and the Code of Criminal Procedure of the Federal District, with a view to ensuring full observance of human rights in Mexico, particularly the rights of persons subjected to any form of detention or imprisonment. The legislative amendments in question have already been approved by the Congress of the Union and came into force on 1 February 1991.

2. The text of the Decree of Tuesday, 8 January 1991, amending various provisions of the Federal Code of Criminal Procedure and of the Code of Criminal Procedure of the Federal District is attached.

EXECUTIVE POWER

MINISTRY OF THE INTERIOR

Decree amending various provisions of the Federal Code of Criminal Procedure and the Code of Criminal Procedure of the Federal District.

In the margin, a seal with the national emblem, reading "United Mexican States - Office of the President of the Republic".

Carlos Salinas de Gortari, Constitutional President of the United Mexican States to the people, know ye that:

The Honourable Congress of the Union has submitted to me the following

DECREE

"THE CONGRESS OF THE UNITED MEXICAN STATES DECREES AS FOLLOWS:

VARIOUS PROVISIONS OF THE FEDERAL CODE OF CRIMINAL PROCEDURE AND THE CODE OF CRIMINAL PROCEDURE OF THE FEDERAL DISTRICT ARE HEREBY AMENDED AS FOLLOWS:

Article 1

The following articles are amended: 16, first paragraph, 22, second paragraph; 28; 61; 73; 80, first paragraph; 87; 95, section III; 103; 124; 125; 128; 135, second paragraph; 140; 146, first paragraph; 154; 174 incorporating the text of section II; 177; 206; 207; 217; 223; 242; 287, first paragraph and sections I, II and IV; and 399, first paragraph; a third paragraph is added to article 123 and to articles 124 bis, 127 bis and 134, with the current third paragraph becoming the fourth; a final paragraph is added to articles 220 bis and 287; a section VII and two final paragraphs to article 298; a section II bis to article 388; and second, third and fourth paragraphs to article 399, with the existing second and third paragraphs becoming the fifth and sixth paragraphs respectively; and article 174, section 1, of the Federal Code of Criminal Procedure is deleted. The amended texts read as follows:

Article 16

In performing their functions, the judge, the Government Procurator's Office and the Federal Judicial Police shall be accompanied by their secretaries, if they have them, or by two witnesses who shall attest to everything that takes place.

...

Article 22

The accused, his defence counsel and, where applicable, such person as the accused may, if he wishes, designate as trustworthy, the aggrieved party, experts and witnesses shall sign at the foot of the document in which they attest to the investigations in which they have taken part and in the margin of each page thereof. If they are unable to sign, they shall place at the foot and in the margins of the document the imprint of any finger, to be specified in the document.

...

Article 28

When the accused, the aggrieved party or complainant, the witnesses or experts do not speak or do not have a sufficient understanding of the Spanish language, one or more translators shall be appointed for them, at the request of one of the parties or on the initiative of the court, who shall translate faithfully the questions and answers to be communicated. At the request of any party, statements may be written in the language of the deponent, although this shall not preclude a translation being made by the translator.

Where no translator of legal age is available, a minor who has attained the age of 15 may be appointed.

...

Article 61

When, in the course of preliminary inquiries, the Office of the Government Prosecutor deems it necessary to conduct a search, it shall apply to the competent judicial authority or, if there is none, to the non-federal authority, in writing, for authorization for the search, indicating its purpose and why it is necessary, the location of the premises to be inspected and the person or persons to be traced or apprehended and the articles sought or secured, to which the investigation must be limited.

Upon completion of the search, a detailed report shall be prepared in the presence of two witnesses selected by the occupier of the premises searched or, in the event of his absence or refusal, by the judicial authority conducting the investigation.

Failure to comply with these requirements shall deprive the search of any evidentiary effect, regardless of whether the consent of the occupiers of the premises was obtained.

...

Article 73

With the exception of high officials of the Federation, all persons are obligated to appear before the courts and before the Office of the Government Procurator when summoned to do so, except when prevented by illness or other physical impediment.

Article 80

When the summons cannot be delivered orally, it shall take the form of a written order, which shall be served by a member of the court staff or by officials of the Office of the Government Procurator directly to the person concerned, who shall sign the appropriate receipt on the copy of the order or, if he is unable to sign, shall place his fingerprints on the copy; if he refuses to do so, the official assigned to deliver the summons shall record that fact and the reasons given by the person summoned for his refusal.

...

Article 87

Court proceedings shall take place in the presence or absence of the parties, except in the case of the Office of the Government Procurator, which must be represented at them. For the hearing of the accused's statement, the accused, assisted by his defence counsel, shall appear, together with such person as the accused may designate as enjoying his confidence, although he is under no legal obligation to do so.

For the final trial proceedings, the presence of defence counsel shall also be required so that he may conduct the oral defence of the accused, notwithstanding any written arguments which he may wish to submit.

In the circumstances referred to in article 124 bis of this Code, the proceedings in which the accused is required to participate may not be conducted without the translator referred to in that article.

...

Article 95

I and II ...

III.

The given and family names of the accused, aliases if any, place of birth, nationality, age, civil status, indigenous ethnic group to which he belongs if any, language, residence or domicile and occupation, office or profession;

IV. A brief summary of the grounds for the decision, listing only the pre-trial evidence;

V. The legal considerations, bases and grounds for the decision;

VI. ...

...

Article 103

Notice shall be served not later than the day following the delivery of the relevant court decisions.

Where the decision involves a summons or time-limit for carrying out a measure, notice shall be served in person not less than 48 hours prior to the day and time when the action or proceedings in question are to take place, with due regard to the provisions of the second paragraph of article 72 of this Code and with the assistance of a translator if the person to be notified does not speak or have a sufficient understanding of the Spanish language.

...

Article 123

...

It shall be prohibited to arrest any person without an arrest warrant issued by a competent judicial authority, except in cases of flagrante delicto or urgent cases when there is no judicial authority at the scene, where the offence is one calling automatically for prosecution, in accordance with the provisions of article 16 of the Political Constitution of the United Mexican States. Subject to this provision, only the Office of the Government Procurator may determine which persons shall be detained, notwithstanding the powers of the judge or court hearing the case. Any contravention of this provision shall render the Office of the Government Procurator or the judicial police official ordering the detention criminally responsible. Any person detained in contravention of the provisions of this article shall be released immediately.

Article 124

In the circumstances provided for in the foregoing article, the appropriate documents shall be drawn up indicating the time, date and manner of notification of the act in question; the name and particulars of the person reporting it, together with his statement and those of the most important witnesses and the accused, if present, and an indication of the indigenous ethnic group, if any, to which he belongs; a description of anything seen in the course of a visual inspection; the names and domiciles of witnesses whom it was not possible to question; the results

of observations made immediately after the events in question, regarding the individuals involved; the steps taken to investigate the acts, and any other information and particulars deemed relevant.

Article 124 bis

In the preliminary investigation of persons who do not speak or have an adequate understanding of the Spanish language, a translator shall be appointed for them from the first day of their detention to assist them at all stages of the proceeding and in communicating with defence counsel.

The judge, shall, on his own initiative or at the request of one of the parties, ensure that this channel of communication remains open; if he deems it necessary, he may appoint defence counsel or a translator to improve such communications.

Article 125

In initiating a preliminary investigation, the Public Prosecutor may summon to testify regarding the acts under investigation persons who are in any way involved in them or appear to have information regarding them. The record shall show who named the person to be summoned and the reason for which the official conducting the inquiries considered their summoning desirable.

Article 127 bis

Any person having to make a statement in the circumstances described in articles 124 and 125 shall be entitled to the assistance of an attorney of his choice.

The attorney may object to the questions asked the deponent if they are immaterial or unlawful. However, he may not answer for his client or prompt him in his replies.

Article 128

When an accused is arrested, detained or gives himself up voluntarily, the following procedure shall be adopted:

I. A record shall be made of the date, time and place of his arrest, where applicable, and of the names and positions of the persons making the arrest;

II. He shall be informed of the charge against him and, where applicable, of the name of the complainant. He shall also be informed that he has the following rights:

(a) the right to communicate immediately with whomever he wishes;

(b) the right to designate immediately a person whom he trusts to defend or assist him, who shall be entitled to be informed of the nature of and grounds for the charge; and

(c) the right not to testify against himself and to remain silent if he so wishes.

For the purposes of (a) and (b) above, he shall be permitted to use the telephone or any other means of communication;

III. If the detainee is an indigenous person who does not speak Spanish, a translator shall be appointed who shall inform him of the rights referred to in the preceding section. If he is an alien, the appropriate diplomatic or consulate representative shall immediately be informed of his arrest;

IV. The Office of the Government Procurator shall receive the evidence submitted by the detainee or his defence counsel in the course, and for the purposes, of the preliminary investigation and such evidence shall be taken into account, as required by law, in ordering the remand or release of the detainee, whichever is the case. When it is not possible to corroborate evidence submitted by the detainee or his defence counsel, the judge shall decide on its admissibility and on the use to be made of it; and

V. In all cases, men and women shall be kept separate in places of detention.

...

Article 134

...

If the detention of a person exceedes the time-limits stipulated in articles 16 and 107, section XVIII, of the Political Constitution of the United Mexican States, such person shall be assumed to have been incommunicado and any statements which he may have made shall be without legal effect.

...

Article 135

...

The Office of the Government Procurator shall order the release of the accused in the circumstances and in accordance with the requirements laid down in article 399 for judges, but may request a restricted residence order if necessary. It shall set bail sufficiently high to ensure that the detainee does not evade justice or the payment of any compensation for damages and injury that he may be called upon to make. In the case of offences involving moving vehicles, bail shall not be granted to persons who committed the offence of leaving the scene of an accident, or who were found under the influence of alcohol or of narcotic, psychotropic or other substances producing similar effects.

Where the offence calls for an alternative or non-custodial sentence, the accused may be released without bail, although he may be placed under restricted residence.

...

Article 140

In the cases referred to in the preceding article, the procedure laid down in articles 294 and 295 of the present Code shall apply.

...

Article 146

In the course of the pre-trial examination, the court hearing the case shall obtain the particulars of the accused, including his age, background and education; personal habits and previous behaviour; the reasons prompting him to commit the offence; his financial situation, in particular at the time when the offence was committed; whether he belongs to an indigenous ethnic group and the practices and characteristics which he might have as a member of such group; and any other verifiable personal details such as family ties, friends or other social relationships, the identity of the injured parties, and factors such as time, place, means and opportunity which demonstrate how serious a public danger he constitutes.

...

Article 154

The preparatory statement of the accused shall begin with his own particulars, including any aliases he may have, the indigenous ethnic group, if any, to which he belongs, whether he speaks or has a sufficient understanding of the Spanish language, and any other personal details. He shall then be informed of his right to be defended either by himself or by a person in whom he has confidence and he shall be advised that, if he does not do so himself, the court will appoint a defence counsel.

If the accused has not requested release on bail, he shall again be informed of that right in accordance with article 20, section 1, of the Political Constitution of the United Mexican States and article 399 of this Code.

He shall then be informed of the nature of the charge or complaint against him, as well as of the names of his accusers and of witnesses against him; he shall be asked whether he wishes to make a statement, and if he makes one, shall be questioned on its content. If the accused decides not to make a statement, the court shall respect his wish, which shall be duly noted in the record of the proceedings.

He shall also be informed of all the following guarantees afforded him under article 20 of the Political Constitution of the United Mexican States: that all the witnesses and evidence which he may present shall be received, in accordance with the law, and that he will be assisted in securing the presence of such persons as he may request, provided they are domiciled within the jurisdiction of the court; that he will be sentenced within four months in the case of an offence punishable by not more than two years' imprisonment, or within one year if the maximum penalty exceeds that time; and that he will be provided with any information which he may request for his defence, which information will be placed on record.

The court shall then question him on his involvement in the acts with which he is charged and shall confront him with the witnesses who have testified against him who are domiciled within the jurisdiction of the Court so that the accused and the defence counsel may ask them any questions relevant to his defence. The Office of the Government Procurator shall also be accorded the same right.

Article 174

In cases of robbery, the corpus delicti can be proved, provided that it has not been possible to do so in accordance with article 168, when there is evidence that the accused has had in his possession an article which, given his personal circumstances, he would be unlikely to have acquired legitimately, where he is unable to furnish proof of the origin of the article and has been accused of stealing it.

...

Article 177

The corpus delicti of health offences, embezzlement, breach of trust and fraud, the commission of which it has not been possible to prove in accordance with the provisions of article 168, may be considered to have been proved with the confession of the accused, provided the confession is corroborated by evidence which, in the view of the court, render it credible. However, in the case of embezzlement, it is also necessary to demonstrate by some other means of evidence, that the requirements of criminal law regarding the accused have been met.

...

Article 206

Whatever is submitted as evidence in accordance with article 20, section V, of the Political Constitution of the United Mexican States, shall be admitted as such, provided that, in the opinion of the judge or court, it is material and not contrary to the law. If the court deems it necessary, its authenticity may be established by some other means of proof.

Article 207

A confession shall be a voluntary statement made by a person of not less than 18 years of age and in full possession of his mental faculties to the Office of the Government Procurator, or the judge or court hearing the case, regarding acts he had committed constituting the type of offence which is the subject of the charge, in accordance with the procedure laid down in article 20 of the Political Constitution of the United Mexican States. It shall be admitted at any stage of the proceedings prior to the handing down of a final judgement.

...

Article 217

If one of the parties requests a reconstruction of events, it shall specify the facts and circumstances which it wishes to clarify, and the procedure may be repeated as often as is deemed necessary by the accused, the defence counsel, the Office of the Government Procurator, the judge or the court.

...

Article 220 bis

If the accused belongs to an indigenous ethnic group, an expert opinion shall be sought, so that the court may have a fuller understanding of his character and of the difference between his culture and the standard national culture.

Article 223

Experts shall hold an official qualification in the science or art relevant to the matter on which they must express an opinion, if the profession or art is legally regulated. If it is not, persons with practical experience shall be appointed. Where the accused belongs to an indigenous ethnic group, the practical experts may be persons belonging to that indigenous ethnic group.

...

Article 242

Every person appearing as a witness must testify on the facts under investigation. The questions asked by the parties must be germane to those facts.

The judge or court shall disallow only those questions which are clearly irrelevant or immaterial for the purposes of the trial. A decision to disallow shall be revocable. In any event, the witness shall substantiate his statement. If a witness fails without good cause, to appear when first summoned, the court shall order him to be brought before it in order to testify.

...

Article 287

A confession made to the Office of the Government Procurator or the court shall fulfil the following requirements:

I. It shall be made by a person of not less than 18 years of age, against himself, in full knowledge and without coercion, or physical or mental duress;

II. It shall be made to the Office of the Government Procurator or to the court hearing the case in the presence of the defence counsel or person having the confidence of the accused and the accused shall be duly informed of the procedure and of the trial proceedings;

III. ...

IV. No information shall be available which, in the opinion of the judge or court, renders the confession incredible.

No person may be remanded for trial if the only evidence against him is his confession. The Judicial Police may submit reports but may not obtain confessions; if they do so, the confessions in question shall be entirely without evidentiary effect.

...

Article 298

...

I to VI ...

VII. If there is evidence establishing the innocence of the accused beyond reasonable doubt.

It shall always be for the judge to decide whether the case is to be dismissed or not.

In no circumstances shall dismissed cases be heard in second instance.

...

Article 388

...

I. and II. ...

II. bis For having omitted to appoint a translator for an accused who does not speak or have a sufficient understanding of the Spanish language, in accordance with the law;

III. to XV. ...

...

Article 399

The accused shall be entitled to release on bail if the average length of the custodial penalty for the offence with which he is charged, including its conditions and terms, does not exceed five years. Where more than one offence is involved, the offence attracting the heaviest penalty shall be taken as basis.

Where the average length of the penalty for the offence in question is less than five years' imprisonment, and where the offence is not one of those listed in the following paragraph of this article, the judge shall grant release on bail, in a reasoned decision, provided that the following conditions are met:

I. The reparation of the injury is, in the opinion of the court, duly guaranteed;

II. The granting of release does not constitute a grave public danger;

III. There is no reason to believe that the accused will be able to evade justice; and

IV. The accused is not a recidivist or habitual offender such that there is reason to believe that, if released, he would evade justice.

For the purposes of the foregoing paragraph, release on bail shall not be granted in the case of the non-federal offences referred to in the following articles of the Criminal Code of the Federal District or federal offences in the case of the Republic as a whole: 60, 123, 124, 125, 127, 128, 132 to 136, 139, 140, 145, 146, 147, 149 bis, 168, 170, 197, 198, 265, 266, 266 bis, 302, 307, 315 bis, 320, 323, 324, 325, 326, 366 and 370, second and third paragraphs, when committed in any of the circumstances described in articles 372, 381, sections VIII, IX and X, and 381 bis.

Similarly, for the purposes of the second paragraph of this article, release on bail shall not be granted in the case of the offences referred to in article 84 of the Federal Firearms and Explosives Act and in articles 102, 104, 105, 108, 109 and 115 bis of the Federal Tax Code.

Article 2

Articles 36, 72, section II, 83, 116, 135, section I and last paragraph, 136, 151, 171, 173, 183, 249, sections II and VI, 262, 266, 269, 270, 285, 290, 291, 295, 296 bis, first paragraph, and 566 are amended. Four final paragraphs are added to article 59; a final paragraph to article 132; a second paragraph to article 134; a section III bis and chapter VIII 'Dismissal' of Title VII, containing articles 660 to 667, are added to articles 165 bis, 285 bis and 431. Section II of article 115 is deleted, so that sections III, IV and V become sections II, III and IV respectively in the Code of Criminal Procedure of the Federal District. The texts concerned read as follows:

Article 36

If, on completion of the investigation, the conditions of article 16 of the Political Constitution of the United Mexican States for ordering the arrest of the accused have not been met, the judge, on his own initiative or at the request of the Public Prosecutor, shall order the cessation of the proceedings and declare the case closed.

...

Article 59

...

The proceedings shall take place in the presence or otherwise of the parties, with the exception of the Office of the Government Procurator, which must be represented at all times. For the hearing of the accused's statement, the accused shall appear, together with his defence counsel and the person whom the accused may, but is not required to, designate as enjoying his confidence.

The final stage of the proceedings shall also be attended by the defence counsel, who may conduct the oral defence of the accused, notwithstanding any written argument he may wish to present.

In the circumstances referred to in article 183 of this Code, proceedings in which the accused must participate may not take place without the translator referred to in that article.

No one may be remanded for trial solely on the evidence of a confession. The Judicial Police may submit reports, but may not obtain confessions; any confessions so obtained shall be entirely without evidentiary effect.

...

Article 72

...

Judgements shall indicate:

I. ...

II. The given and family names of the accused, aliases if any, place of birth, nationality, age, civil status, membership of any indigenous ethnic group, language, residence or domicile, occupation, office or profession;

III. to V. ...

...

Article 83

The officials responsible under law for serving notice of decisions, shall do so in person and shall record the date and time of service, read out the full text of the decision to the person to be notified thereof, and be assisted by the translator if the person to be notified does not speak or have a sufficient understanding of the Spanish language. A copy of the decision shall be given to the person concerned, if he so requests.

...

Article 115

...

I. ...

II. By evidence that the accused has had in his possession an article which, given his personal circumstances, could not have been acquired lawfully, if its origin cannot be proved;

III. By evidence of the pre-existence, ownership and subsequent absence of the physical object to which the offence relates; and

IV. By evidence that the injured party is in a position to possess the physical object in question, is well regarded and has taken some judicial or extrajudicial steps to discover the item stolen.

This evidence should be referred to in the order set out above, with latter items being accepted only in the absence of earlier ones.

Article 116

In cases of fraud, breach of trust and embezzlement, the corpus delicti shall be proved by the means described in section 1 of the preceding article, with due regard to the provisions of its final

paragraph. In addition, in cases of embezzlement, the conditions laid down by criminal law regarding the accused must be shown to exist, by any evidentiary means.

...

Article 132

...

I and II ...

In the case of offences calling for automatic prosecution; as referred to in article 16 of the Political Constitution of the United Mexican States, it shall be prohibited to arrest any person without an arrest warrant issued by a competent court, except in circumstances of flagrante delicto or urgent cases where no judicial authority is immediately available. Only the Office of the Government Procurator may, subject to this provision, determine which persons shall be detained, notwithstanding the powers of the judge or court dealing with the case. Any contravention of this provision shall render the Office of the Government Procurator or the judicial police official ordering the detention criminally responsible. Any person detained in contravention of the provisions of this article shall be released immediately.

...

Article 134

...

Where a person is detained beyoond the time-limit specified in articles 16 and 107, section XVIII, of the Political Constitution of the United Mexican States, he shall be presumed to have been incommunicado and any statements which he may have made in detention shall be without legal effect.

Article 135

...

I. Confession;

II. to VI. ...

Whatever is submitted as evidence shall, provided that, in the opinion of the judge or court, it is material, be admitted as such in accordance with article 20, section V, of the Political Constitution of the United Mexican States. If the judicial authority deems it necessary, its authenticity may be established by some other means of proof.

Article 136

A confession shall be a voluntary statement by a person of not less than 18 years of age and, in full possession of his mental faculties, to the Office of the Government Procurator, or the judge or court hearing the case, regarding acts he has committed constituting the type of offence which is the subject of the charge, in accordance with the procedure laid down in article 20 of the Political Constitution of the United Mexican States.

...

Article 151

If one of the parties requests a reconstruction of events, it shall specify which facts and circumstances it wishes to clarify, and the procedure may be repeated as often as is deemed necessary by the accused, the defence counsel, the Office of the Government Procurator, the judge or the court.

...

Article 165 bis

If the accused belongs to an indigenous ethnic group, an expert opinion shall be sought, so that the court may have a fuller understanding of his character and of the differences between his culture and the standard national culture.

...

Article 171

Experts shall hold an official qualification in the science or art relevant to the matter on which they must express an opinion if the profession or art is legally regulated; if it is not, the judge shall appoint persons with practical experience. Where the accused belongs to an indigenous ethnic group, the practical experts may be persons belonging to that indigenous ethnic group.

...

Article 173

Experts shall be summoned in the same manner as witnesses; they shall also fulfil the same requirements as witnesses and shall be subject to the same causes of impediment.

...

Article 183

If the accused, the injured party, the complainant, witnesses or experts do not speak or have a sufficient understanding of the Spanish language, the judge shall appoint one or more translators of legal age who shall swear to translate faithfully the questions and answers to be communicated. Only when a translator of legal age cannot be found may a person of not less than 15 years of age be appointed.

...

Article 249

A confession to the Office of the Government Procurator or to the court shall fulfil the following requirements:

I. ...

II. It shall be made knowingly against himself by a person of not less than 18 years of age, without coercion or physical or mental duress;

III. ...

IV. It shall be made to the Office of the Government Procurator or to the judge or court hearing the case and in the presence of the defence counsel or person having the confidence of the accused and the accused shall be duly informed of the procedure and the trial proceedings;

V. ...

Article 262

It shall be the duty of officials of the Office of the Government Procurator and their assistants acting on their orders automatically to conduct an investigation of non-federal offences brought to their attention. A preliminary investigation may not be initiated automatically in the following cases:

I. ...

II. ...

...

Article 266

In cases of flagrante delicto or obvious urgency, and when no judicial authority is immediately available, it shall be the duty of the Office of the Government Procurator, and the Judicial Police acting on its instructions, to arrest the culprit without waiting for a court order.

...

Article 269

When an accused is arrested, detained, or gives himself up voluntarily, the following action shall immediately be taken:

I. A record shall be made of the date, time and place of the arrest, where applicable, and of the names and positions of the persons making the arrest;

II. He shall be informed of the charges against him and, where applicable, of the name of the complainant. He shall also be informed that he has the following rights:

(a) the right to communicate immediately with whomever he wishes;

(b) the right to designate immediately a person whom he trusts to defend or assist him, who shall be entitled to be informed of the nature of and grounds for the charge; and

(c) the right not to testify against himself and to remain silent if he so wishes.

For the purposes of (a) and (b) above, he shall be permitted to use the telephone or any other means of communication;

III. If the detainee is an indigenous person who does not speak Spanish, a translator shall be appointed for him who shall inform him of the rights referred to in the preceding section. If he is an alien, the appropriate diplomatic or consular representative shall immediately be informed of the arrest;

IV. The authority ordering the arrest shall immediately inform the Federal District public telephone service and record the date and time at which it did so;

V. In all cases, men and women shall be kept separate in places of detention.

Article 270

Before the accused is placed in pre-trial detention, his particulars shall be taken and he shall be duly identified. The Office of the Government Procurator shall receive the evidence submitted by the detainee or his defence counsel in the course, and for the purposes, of the preliminary investigation and such evidence shall be taken into account, as required by law, in ordering the remand or release of the detainee, whichever is the case. When it is not possible to corroborate evidence submitted by the detainee or his defence counsel, the judge shall decide on its admissibility and on the use to be made of it.

...

Article 285

The same officials shall also record any observations made regarding the character of the offender either at the time when the offence was committed, during his detention pending trial or during any investigations that may have been conducted, including the indigenous ethnic group, if any, to which he belongs.

Article 285 bis

For the purposes of preliminary proceedings against a person who does not speak or have sufficient understanding of the Spanish language, a translator shall be appointed from the first day of detention. This translator shall assist the accused at all stages of the proceedings in which he must participate and in the necessary communication with his defence counsel.

The judge, either on his own initiative or at the request of a party, shall ensure that this channel of communication remains open and, should he deem this necessary, may appoint a translator to improve such communication.

...

Article 290

The preparatory statement of the accused shall begin with his own particulars, including any aliases he may have, the indigenous ethnic group, if any, to which he belongs, whether he speaks or has a sufficient understanding of the Spanish language and other personal details. He shall then be informed of his right to be defended either by himself or by a person in whom he has confidence, and he shall be advised that if he does not do so himself, the judge will appoint a defence counsel.

If the accused has not requested release on bail, he shall again be informed of that right in accordance with article 20, section I, of the Political Constitution of the United Mexican States and article 556 of this Code.

He shall then be informed of the nature of the charge or complaint against him, and of the names of his accusers and of witnesses against him. He shall be asked whether he wishes to make a statement and, if he makes one, shall be questioned on its content. If the accused decides not to make a statement, the court shall respect his wish, which shall be duly noted in the record of the proceedings.

He shall also be informed of all the following guarantees afforded him under article 20 of the Political Constitution of the United Mexican States: that all the witnesses and evidence which he may present shall be received in accordance with the law and that he will be assisted in securing the appearance of such persons as he may request, provided they are domiciled within the jurisdiction of the court; that he will be sentenced within four months in the case of an offence punishable

by not more than two years' imprisonment, or within one year if the maximum penalty exceeds that time; and that he will be provided with any information which he may request for his defence, which information will be placed on record.

Article 291

If the accused wishes to make a statement, he shall be questioned on the acts with which he is charged, for which purpose the judge shall adopt the method, terms and other procedures which he deems necessary and appropriate to the case, in order to shed light on the offence and on the time and place at which it was conceived and carried out.

...

Article 295

The judge shall question the accused on his involvement in the acts with which he is charged and shall confront him with the witnesses who have testified against him who are within the jurisdiction of the court, so that the accused and the defence counsel may ask them any questions relevant to his defence. The Office of the Government Procurator shall also be accorded the same right.

...

Article 296 bis

In the course of the pre-trial proceedings, the judge hearing the case shall take note of the particular circumstances of the accused, and shall assemble information on his age, background and education; his personal habits and previous conduct; the reasons which prompted him to commit the offence; his financial situation and his specific circumstances at the time when the offence was committed; his membership, if any, of an indigenous ethnic group and his practices and characteristics as a member of such group; any other personal details that can be ascertained, such as family ties, friends or other social relationships; the status of the injured parties and the circumstances of time, place, method and opportunity which indicate the degree of public danger which he represents.

...

Article 431

...

I to III ...

III bis for neglecting to appoint a translator for an accused who does not speak or have sufficient understanding of the Spanish language, in accordance with this Code;

IV to XV ...

...

Article 556

The accused shall be entitled to release on bail if the average length of the custodial penalty for the offence with which he is charged, including its conditions and terms, does not exceed five years' imprisonment. Where more than one offence is involved, the one attracting the heaviest penalty shall be taken as basis.

Where the average length of the penalty for the offence in question is less than five years' imprisonment, and where the offence is not one of those listed in the following paragraph of this article, the judge shall grant release on bail, in a reasoned decision, provided that the following conditions are met:

(i) The reparation of the injury is, in the opinion of the court, duly guaranteed;

(ii) The granting of release on bail does not constitute a grave public danger;

(iii) There is no reason to believe that the accused will be able to evade justice; and

(iv) The accused is not a recidivist or habitual offender such that there is reason to believe that, if released, he would evade justice.

For the purposes of the foregoing paragraph, release on bail shall not be granted in the case of the non-federal offences referred to in the following articles of the Criminal Code of the Federal District and of federal offences in the case of the Republic as a whole: 60, 139, 140, 168, 170, 265, 266, 266 bis, 287, 302, 307, 315 bis, 320, 323, 324, 325, 326, 366 and 370, second and third paragraphs, when committed in any of the circumstances described in articles 372, 381, sections VIII, IX and X, and 381 bis.

...

CHAPTER VIII

Dismissal

Article 660

A case shall be dismissed in the following circumstances:

I. If the Attorney General of the Federal District decides that no indictment is to be brought;

II. If it is apparent that criminal responsibility is extinguished;

III. If no detention order has been made or commital decision handed down and it is apparent that the act under investigation is not an offence, or if, on completion of the investigation, it is established that the offence in question did not take place;

IV. If, following the release of the accused for lack of evidence, the investigation is completed and there is no new evidence to justify the issue of a new arrest warrant, or the situation referred to in article 546 obtains;

V. If it is fully established that grounds for exemption of the accused from responsibility exist;

VI. If there is evidence establishing the accused's innocence beyond reasonable doubt; and

VII. If this Code specifically so provides.

Article 661

The proceedings shall cease and the case shall be closed in the cases referred to in section III of the preceding article, or if it is fully established that the only persons presumed to be responsible are in any of the situations referred to in sections I, II, IV, V, VI and VII of that article. However, if any one of them is not in such a situation, the proceedings against him shall continue, provided that they do not have to be suspended in accordance with this Code.

Article 662

If the proceedings concern two or more offences and there are grounds for dismissal in respect of one of them, dismissal shall be ordered in respect of that offence and the proceedings shall continue in respect of the others, provided that there are no grounds for suspending them.

Article 663

Dismissal may be ordered on the initiative of the court or at the request of a party in the circumstances described in sections I to III of article 660, and at the request of a party in other cases.

If dismissal is requested by a party, the court shall decide whether there are grounds for it or not.

In no circumstances shall dismissal be ordered in second instance.

Article 664

If it is decided upon by the court, dismissal shall be ordered directly by the latter. If dismissal is requested by a party, the matter shall be dealt with separately as a non-specific incidental question.

Article 665

A dismissal order may not be issued after the Office of the Government Procurator has brought an indictment, except in the cases referred to in sections I, II and VII of article 660.

Article 666

In the event of a dismissal being ordered, the accused shall be discharged unconditionally in respect of the offence for which the detention order was issued.

Article 667

The dismissal order, which shall be final, shall have the effect of an acquittal with the force of res judicata.

Transitional article

The present decree shall enter into force on 1 February 1991.

Mexico, D.F., 20 December 1990.

(Signed) Fernando Cordoba Lobo,
Deputy President;

Ricardo Canavati Tafich,
Senator, President;

Juan Manuel Verdugo Rosas,
Deputy Secretary;

Eliseo Rangel Gaspar,
Senator, Secretary.

In accordance with the provisions of article 89, section I, of the Political Constitution of the United Mexican States and for promulgation and execution, I issue the present Decree at the residence of the Federal Executive Power, Mexico City, Federal District, on the twenty-second day of December, one thousand nine hundred and ninety.

(Signed) Carlos Salinas de Gortari
Fernando Gutiérrez Barrios
Secretary of the Interior"

## PAKISTAN

[2 April 1991]
[Original: ENGLISH]

1. The Government states that the human rights of persons subjected to any form of detention or imprisonment are covered in various national laws.

2. The Constitution of Pakistan, 1973, covers the following rights: not to be subjected to arrest or detention arbitrarily (10.1); not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (10.1); to be informed of the reasons or grounds of the arrest or detention (10.1); to be brought promptly before a court and to have a trial within a reasonable time (10.2); to communicate with legal counsel (10.1); to be present at one's trial and to defend oneself in person or through legal assistance of one's own choosing (10.1); not be be compelled to testify against oneself or to confess one's guilt (13.b); not be be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, and not to receive a heavier penalty than the one that was applicable at the time when the criminal offence was committed (12.1); to be treated with humanity and with respect for the inherent dignity of the human person (14); to equal protection of the law, without any discrimination (25).

3. The Code of Criminal Procedure covers the right to the free assistance of an interpreter if the accused cannot understand or speak the language used in the court (section 360.3) and the right to a fair and public hearing by an independent and impartial tribunal (section 352).

4. The Qanun-e-Shahadat, 1984, covers the accused's right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (article 132).

5. The right to be presumed innocent until proved guilty according to law constitutes a general principle of law as recognized by Pakistan's Penal Law.

6. The right not to be subjected to arbitrary detention is unequivocally guaranteed by article 9 of the Constitution which declares "No person shall be deprived of life or liberty save in accordance with law". An accused person's right to be present at his trial is specifically mentioned in section 353 of the Criminal Procedure Code. Section 340 refers to his right to be defended through legal counsel. Sections 244 and 265-F deal with the accused's right to enter a defence and to compel production of evidence at his instance.

## SPAIN

[15 March 1991]
[Original: SPANISH]

1. The Government reports that the following activities were conducted in 1990 in connection with the question of the human rights of persons subjected to detention or imprisonment:

(a) In the European regional context, in the Council of Europe:

(i) Participation in the September 1990 meeting of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which studied the situation in respect of the hunger strike by detainees belonging to GRAPO;

(ii) Report to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment dated 28 December 1990 in relation to its letter of 17 December 1990 concerning information about the torture complained of by the sisters Arrate and Estíbaliz Lejarza and Jesús Mariá Salterain;

(b) In the United Nations context:

(i) Report to Mr. Kooijmans, the Commission on Human Rights Special Rapporteur on Torture, dated 4 September 1990, in relation to the complaints of torture made by Mr. Henri Parot, a member of ETA. As a result of this report, the paragraph in question was eliminated from the report of the Special Rapporteur;

(ii) Submission of the third report of the Kingdom of Spain to the Human Rights Committee, in Geneva, on 29 and 30 October, pursuant to article 40 of the International Covenant on Civil and Political Rights;

(iii) Submission of the report of the Kingdom of Spain to the Committee against Torture, in Geneva, on 13 November 1990, pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treature or Punishment.

## TUNISIA

[18 February 1991]
[Original: FRENCH]

1. Tunisian legislation establishes a number of guarantees designed to preserve the rights, without discrimination, of justiciable persons.

### A. Constitutional guarantees

2. The Constitution of the Republic of Tunisia of 1959, which constitutes Tunisia's supreme legal norm, establishes the following principles in relation to this question:

The principle of the guarantee of the inviolability of the human person and freedom of conscience (article 5);

The principle of the equality of all citizens before the law (article 6);

The presumption of innocence until proof of guilt has been established at a trial offering all the guarantees necessary for the defence (article 12);

The principle of the personal character of penalties and the principle of the lawfulness of the penalty, with its corollary, non-retroactivity of criminal law (article 13).

3. The Constitution further guarantees the independence of the Judiciary and specifies that the only authority above judges in the administration of justice is the law. The Supreme Council of Justice, whose membership and functions are established by law, monitors respect for the guarantees afforded to the members of the Judiciary in respect of appointment, promotion, transfer and discipline (chapter IV of the Constitution relating to the Judiciary).

B. Implementation of the constitutional guarantees

(a) Detention in custody and pre-trial detention.

4. Act No. 87-70 of 26 November 1987 amending the Code of Criminal Procedure regulated in detail the procedure for detention in custody and interrogation which are the responsibility of officers of the judicial police. The new article 13 bis of the Code provides that police station, national guard and Customs officers acting as officers of the judicial police may not hold a suspect for a period exceeding four days, even in the case of a crime or of flagrante delicto. They are required to notify the Government Attorney.

5. The Government Attorney may, by written decision, extend that period by the same amount of time on one occasion and, in case of absolute necessity extend it a second time for a period of two days only.

6. In the course of the detention in custody or when it expires, the person detained in custody or one of his ascendants, descendants, brothers or sisters or his spouse may request a medical examination; this is referred to in the detention record which must always indicate the date and time of the beginning and end of the detention in custody. The date and time of the beginning and end of any interrogation must also be recorded.

7. The record must be initialled by the person detained in custody; in the event of his refusal to do so, this fact must be mentioned, and the reason for the refusal must also be recorded.

8. Police station, national guard and Customs officers, in their capacity as officers of the judicial police, "are required to keep in the stations where detention in custody occurs a classified special register showing the identities of the persons held at their disposal with an indication of the date and time of the beginning and end of the detention in custody".

9. The practice adopted by Tunisian courts is to give priority for trial to accused who are in detention. However, the necessities of the investigation or preliminary investigation require varying periods of time in order to carry out all the expert work called for by the law. Moreover, considerations of public order, security and good justice require accused persons to be placed in detention before trial.

10. For these reasons the Code of Criminal Procedure permits pre-trial detention, while nevertheless regarding it as an exceptional measure (article 84).

11. An accused person may be held in pre-trial detention where a crime is involved or in the case of flagrante delicto and whenever the existence of compelling circumstantial evidence makes detention seem necessary as a security measure in order to prevent further offences, to guarantee execution of the penalty or as a means of ensuring a genuine pre-trial investigation.

12. Even for these cases, however, the legislation of November 1987 specified a six-month period of detention, renewable by the examining magistrate, upon the advice of Government Attorney and the issuing of a substantiated order, only once for offences and twice for crimes. The renewal order may be appealed to the indictment division.

13. In the case of certain offences of lesser gravity, there is a legal entitlement to release five days after the examination.

14. Under the Code of Criminal Procedure, the examining magistrate who has decided on detention may, in all cases, order the pre-trial release of the accused, proprio motu, on application by the accused or upon submission by the Government Attorney.

15. With the aim of giving the accused greater guarantees against possible abuses, the law referred to above has included new provisions to determine the duration of pre-trial detention for ordinary and serious offences, and to grant the detainee more effective remedies. It provides, inter alia, for a decision to be given upon an application for pre-trial release within four days of submission of the application; the accused has a period of four days to appeal against an order by the examining magistrate rejecting the application; the indictment division must give its decision on the appeal within a period of not more than eight days from the transmission of the file on the case (new articles 86 and 87).

### (b) Trial proceedings

16. The rules contained in the Code of Criminal Procedure are based on the presumption of innocence; during the preliminary examination, the defendant is simply charged, during the trial he is indicted and he will be sentenced only if his guilt has been established by the competent court.

#### (i) Preliminary examination

17. The task of the examining magistrate is to make every effort to ascertain the truth and to establish all the facts which will be of use to the trial court in making its decision (article 50). Ascertaining the truth involves examining all factors relevant to the prosecution and the defence.

18. The examination must provide the accused with the opportunity to clear himself of the charge (article 69).

19. If the evidence submitted is not refuted, the judge commits the defendant for trial (article 50).

20. As early as the first appearance of the accused, the examining magistrate is required to inform of the acts of which he is accused and of the relevant laws. The examining magistrate may receive the accused's statement only after having informed him of his right to answer only in the presence of counsel of his choice. This warning must be mentioned in the record of the examination (article 69).

21. If the accused declines to choose a counsel or if the latter, duly summoned, fails to appear, the examining magistrate proceeds with the examination.

22. If no counsel is chosen, when the defendant is indicted for an offence and requests that a lawyer be appointed for his defence, defence counsel must be appointed for him by the court (article 69).

23. Article 72 of the Code states that the accused may be questioned only in the presence of his counsel unless he expressly renounces this right. By attending the examination proceedings, the counsel may not only exert genuine control over the actions of the judge but also, by his presence, help to give the accused confidence. If the latter adduce evidence in his defence, the judge is required to examine it as soon as possible.

24. The record of the proceedings is made available to the counsel the day prior to each examination which the accused must undergo.

25. The record of the examination is read to the accused, numbered and initialled on each page and signed by the judge, the registrar and the person appearing and, if necessary, by the defence lawyer and the interpreter (article 72).

26. The language used by the courts is Arabic. In the event of the accused being unable to speak this language, an interpreter must be appointed by the judge.

(ii) The trial

27. The defendant must be summoned to appear either through administrative channels or by process. The summons must specify the act being prosecuted and refer to the law under which it is punishable. It must specify the court seized of the case and the place, time and date of the hearing (article 135). This allows the defendant enough time and the necessary means for preparation of his defence. Article 136 specifies that there must be at least three days between the date of delivery of the summons and the date set for appearance at the hearing.

28. It is compulsory for a lawyer to be present when criminal cases are heard. If the accused does not choose a lawyer, the president may officially appoint one for him proprio motu (article 141).

29. The lawyer conducts the case for the defendant in accordance with the law, and in the interest of the person prosecuted.

30. The defendant may request the hearing of witnesses: if this is refused, the reason for the decision must be given (article 144). The decision may be revoked if when the grounds given are considered inadequate.

31. Court hearings are held in Arabic; in the event that the accused does not speak this language, an interpreter is appointed by the court; the same applies for witnesses.

32. Under Tunisian law, the judge makes his decision, based on his considered judgement, in the light of the evidence submitted. This evidence includes confessions of guilt. It is important to note, however, that a confession made out of court has no effect if it is withdrawn by the accused in court. A confession made in court does not bind the judge but, appreciation of it, like that of any other evidence, is left to his discretion (article 152 of the Code of Criminal Procedure).

(c) The prison system and conditions of detention

33. Following the reform introduced on 7 November 1987, particular importance has been attached to the conditions of detention in prisons. Thus, Decree No. 88-1876 of 14 November 1988 establishing special regulations for prisons introduced new rules to improve prison conditions and to give priority to the re-education and rehabilitation of prisoners by implementing measures contributing to reform and social reintegration of offenders, through a practical organization of life in prisons and in observation centres.

34. Following this principle, prisons have been classified according to the severity of the sentence to be served: (1) main prisons; (2) regional prisons; (3) semi-open prisons.

35. Main prisons hold persons sentenced to a period of imprisonment of five years or more.

36. Regional prisons hold persons sentenced to re-educational work and those sentenced to imprisonment for ordinary offences or minor violations of the law (article 2 of the aforementioned decree of 14 November 1988).

37. Within the prisons, inmates are classified according to age, sex and penal status: convicted prisoner, prisoner awaiting trial, first-time or persistent offender (article 7).

38. Women prisoners are, in theory, held in special prisons. Where there is none, prison blocks are assigned exclusively for women prisoners. In both cases, they are guarded by women prison officers under the authority of the prison governor (article 8).

39. The children of women prisoners may remain with them until they are three years old. This period may be extended on the request of the mother and with the agreement of the prison administration (article 9).

40. The above-mentioned decree guarantees detainees the right to an individual bed. They are kept in collective conditions both day and night. They may be placed in isolation only if the requirements of pre-trial proceedings or the safety of the detainee make this necessary. In both cases, no two detainees may be held in isolation in the same room. The individual cell must have basic facilities and sanitation (article 10).

41. Article 14 of the above-mentioned decree details the rights of detainees, which include:

- the right to treatment in the prison's hospital or infirmary;

- the right to hygienic and clean conditions;

- the right to receive visits;

- the right, for detainees awaiting trial and convicted prisoners with indefinite sentences, to confer with their lawyers in specially designated rooms, without the presence of prison officers;

- the right to employment, having regard to the kind of work available and the detainee's special skills, in exchange for remuneration set in accordance with the resources available, the working hours being those legally established;

- the right to exercise for at least one hour every day.

42. Detainees enjoy certain guarantees as regards discipline within the prisons. They may undergo punishment only by decision of a disciplinary board which comprises a social worker and a member representing the detainees. They are guaranteed the right of defence and appeal against the disciplinary decision to a supervisory authority. The punishments imposed by the disciplinary board may range from losing the right to receive food parcels and packages for a period not exceeding 15 days, to isolation for a period not exceeding 10 days.

(d) Penalties for violation of the rights of detainees

43. Tunisian legislation, particularly the Penal Code, provides severe penalties for any form of attack by officials on the person or dignity of detainees. Thus, in the event of a violation of the prescribed regulations, amounting to an unlawful infringement of individual freedom, the perpetrator may be held criminally responsible under article 103 of the Penal Code which provides for imposition of a penalty of five years' imprisonment, plus a fine on the officials responsible.

44. Officials and other persons treated as such who inflict or have violence inflicted on a person are punished under article 101 of the Penal Code, entailing five years' imprisonment and a fine.

45. Article 103 of the Penal Code stipulates that officials who inflict violence or ill-treatment, or have them inflicted, on an accused person or a witness in order to obtain a confession or a statement are liable to a penalty

of five years' imprisonment. The maximum sentence is reduced to six months' imprisonment in cases where there are merely threats of violence or ill-treatment.

46. Finally, it is pointed out that in cases where violence or ill-treatment have been proven proceedings have been instituted against the perpetrators, regardless of their rank, and severe penalties have been imposed on them, particularly in view of their position as State officials.

Conclusion

47. With regard to the question of exceptional circumstances which might be cited as a justification for resorting to torture, it must immediately be pointed out that no provision is made for this in Tunisian legislation.

48. Article 46 of the Constitution allows the President of the Republic to take exceptional measures, for a given period, following consultation with the Prime Minister and the President of the Chamber of Deputies, in the event of an immediate threat to the Republic's institutions or to Tunisia's security or independence, which hampers the smooth functioning of government. However, any regulations made in pursuance of this article have never in any way authorized acts of torture or violence against persons. The state of emergency which was last declared in 1984 on the basis of these provisions does not allow any authority to carry out acts of torture or violence.

49. It should be mentioned, in conclusion, that, in practice, the human rights situation in general and the situation of persons detained or imprisoned in particular, has, since the change on 7 November 1987, benefited from a number of practical steps and measures which have reinforced the liberal character of the Tunisian legal system and have translated preoccupation with respect for the right to human dignity and physical integrity into rules for practical enforcement.

50. The legislative provisions regulating detention in custody and pre-trial detention, as well as prison conditions, and the adoption without any reservation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment have been supplemented by measures designed to introduce new methods and practices into the treatment of accused or detained persons.

51. These measures include:

- the abolition of the Court of National Security and of the Office of Attorney General of the Republic (procureur général de la République) (Act 87-79 of 29 December 1987);

- the abolition of forced labour (Act 89-23 of 27 February 1989);

- an amnesty granted to those convicted of offences committed for political or trade union reasons prior to 7 November 1987 (Act 89-63 of 3 July 1989);

- circular No. 3 of the Ministry of the Interior of 4 January 1989 requesting the police authorities to comply strictly with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[Copies and extracts from the texts referred to were enclosed as annexes and may be consulted at the Centre for Human Rights.]

## TURKEY

[30 January 1991]
[Original: English]

1. The Government states that detailed information or improvements in Turkish legislation concerning the human rights of persons subjected to any form of detention or imprisonment can be found in documents E/CN.4/Sub.2/1985/Add.1 and 3, E/CN.4/Sub.2/1987/12 and Add.2, E/CN.4/Sub.2/1988/13, E/CN.4/Sub.2/1989/20 and E/CN.4/Sub.2/1990/20. Document E/CN.4/Sub.2/1990/20 contains concise information on amendments made to the legislation in 1989. Since then, Turkey has taken additional steps in the field of human rights, which also have positive effects on the persons subjected to any form of detention or imprisonment.

2. On 8 January 1990, Turkey recognized the compulsory jurisdiction of the European Court of Human Rights.

3. On 4 March 1990, the Prime Minister issued instructions for the strict implementation of article 136 of the Code of Criminal Procedure which stipulates the right of all accused persons to have legal counsel at any and every stage of the proceedings. In this connection, it should also be noted that article 135 of the Code of Criminal Procedure stipulates that any person under detention or interrogation has the right not to answer. In addition to this, "testimony by way of free will" is a general principle of the Turkish legal system. In other words, testimony must be free of any kind of pressure. Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is fully and directly applicable in Turkey.

4. On 15 September 1990, Turkey signed the United Nations Convention on the Rights of the Child.

5. On 6 November 1990, Turkey signed the Ninth Additional Protocol to the European Convention on Human Rights which stipulates the right of the individual to submit petitions to the European Court of Justice.

6. On 6 November 1990, Turkey also signed the revised European Social Code.

7. In November 1990, the Conference on Security and Cooperation in Europe Paris Charter was signed by Turkey.

8. On 21 November 1990, the Turkish Grand National Assembly adopted Law No. 3679 introducing important amendments to the Turkish Penal Code. The said law came into effect on 29 November 1990. Thus, the death penalty for 18 different types of crime, including the crime stipulated in article 141, was abolished and replaced by the lifetime prison sentence. It is important to note that no death penalty has been executed in Turkey since 1984.

9. On 4 December 1990, the Turkish Grand National Assembly adopted a law concerning the establishment of a Human Rights Inquiry Commission. It is believed that this parliamentary Commission will have a major role in monitoring and further improving the human rights situation in Turkey. The purpose and extent of the law in question are defined as follows:

> "Article 1: The purpose of this Law is to regulate the establishment, functions, authority and rules of procedure of a Human Rights Inquiry Commission to be set up within the Turkish Grand National Assembly to ensure the respect of human rights in Turkey and in the world as well as the conformity of Turkish practices with international developments by following closely these developments and to examine applications.
>
> "Article 2: the application of this Law comprises those human rights and freedoms specified in the Turkish Constitution and multilateral international documents such as the Universal Declaration of Human Rights and the European Convention on Human Rights, as well as the human rights generally accepted by the international community."

The law also defines the functions, competence, rules and regulations of procedure of the Commission.

## YUGOSLAVIA

[21 March 1991]
[Original: English]

1. Proceeding from the option for a democratic development of society, for political pluralism, the market economy model and the rule of law, the Government of Yugoslavia has undertaken activities aimed at identifying and suggesting changes in positive laws, essentially transforming the scope, content and concept of human rights.

2. All the activities undertaken in this field and the measures proposed by the Government of Yugoslavia are the result of the awareness that the rule of law as an achievement of civilization is crucial for the status of the individual; that modern social, political and economic development is inconceivable without full respect for the dignity of the human person and without recognition of human rights and fundamental freedoms; that there are no upper limits in the realization of human rights; that the protection of human rights should not stop at national borders; and that the individual and his rights and freedoms have become the subject of international concern, interest and protection and the conditio sine qua non of any progress.

3. In view of the fact that the exercise of human rights, particularly of persons being prosecuted or ordered held in detention pending trial or imprisoned upon conviction, largely depends on the enforcement of criminal codes and their definitions, proposed amendments to the Code of Criminal Procedure and to the Penal Code of the Socialist Federal Republic of Yugoslavia or to the Law on the Enforcement on Aliens of Sanctions for Criminal Offences, which are currently under review, are of particular relevance in that respect.

4. In this context and bearing in mind that the basic institutions of the Code of Criminal Procedure have been adequately defined and that, as regards human rights, they envisage a democratic procedure on a par with those in many other countries, and the rights enumerated in Sub-Commission resolution 7 (XXVII) entitled "The question of human rights of persons subjected to any form of detention or imprisonment", attention is drawn to the following provisions of the national legislation:

(a) Under article 1, paragraph 2, of the Code of Criminal Procedure, the freedom and rights of the accused person may be restricted pending the sentence becoming effective, but only under conditions, to the extent and scope stipulated by law. In this way, arbitrary restrictions are eliminated;

(b) Article 179 of the Constitution guarantees respect for, and the dignity of, the human person in criminal and any other proceedings, in the case of deprivation or restriction of liberty or during enforcement of a penalty;

(c) Pursuant to article 180, paragraph 1, of the Constitution, every person shall be entitled to equal protection;

(d) Article 4, paragraph 1, of the Code of Criminal Procedure stipulates that the investigating authorities are obliged to inform the accused person at the first hearing about the criminal offence he is charged with and the grounds of the charges against him. In other words, the accused person is informed of the substantive reasons and the legal grounds of the charges;

(e) Under article 14 of the Code of Criminal Procedure, the court shall ensure the efficiency of procedure, which implies its right to request the expediting and shortening of the procedure provided that the high quality and lawfulness of the procedure are secured. In this respect, under article 144 of the Code, courts are given special authorizations which prevent abuses related to procedural delays;

(f) Article 74 of the same Code provides for the right of the accused person to communicate with his legal counsel in order to organize and direct the defence. Paragraph 2 of this article provides for certain restrictions in respect of communication of the accused person in pre-trial detention. Even then, communication is allowed to the extent necessary to permit the exercise of the right of defence and the achievement of the purpose of detention. All restrictions cease to apply after the investigation has been completed or preliminary charges or an indictment has been filed;

(g) In view of the fact that the right of defence is a constitutional principle laid down in article 182, paragraph 1, of the Constitution, article 4, paragraph 2, of the Code of Criminal Procedure provides in principle for the right of defence, while its article 11 stipulates that this right may be exercised either through material defence (the accused defends himself in person or through formal defence (legal assistance of counsel). Defence through legal assistance is available from the moment of the institution of the proceedings, whether as optional or compulsory, with the proviso that its compulsory nature should be prescribed by law. Before the first hearing the accused should be advised of his right to a counsel of his own choosing (art. 67, para. 2, Code of Criminal Procedure). The accused himself decides whether he will hire one;

(h) Article 5 of the Code of Criminal Procedure proclaims the constitutional principle of the right to use the written and oral languages of the peoples and national minorities in Yugoslavia. Submissions to courts are made and admitted in all the languages spoken by the peoples of Yugoslavia and in all minority languages in the tribunals where minority languages are in official use. It should be noted in this context that the right to decide on the language to be used in proceedings is the exclusive right of the parties (art. 147, para. 7, Code of Criminal Procedure). The parties, witnesses and other persons involved in the proceedings also have the right to use their own language in the investigation or in any other court proceedings as well as at the main hearing. If the trial or the main hearing is not conducted in the native language of the party, interpretation will be provided for his or her testimony or for what is said in court; identity documents and other written evidence are also translated into the party's language (art. 7, para. 2, Code of Criminal Procedure). The party will be advised of the right to an interpreter, which is noted in the transcript, as well as the party's statement in that respect. The interpretation, if necessary, will be done by the court interpreter;

(i) In accordance with article 176, paragraph 2, of the Constitution, article 10 of the Code of Criminal Procedure prohibits and makes punishable any extortion of self-incriminating testimony or of confession of guilt. This prohibition encompasses all State authorities involved in the proceedings, including law enforcement officials, examining magistrate and the public prosecutor. It also includes all proceedings (summary proceedings, proceedings for juveniles, special proceedings) and all stages of the proceedings. If testimony is extorted from the accused or a witness, it may not be used as evidence nor can the court ruling be based on it (art. 218, para. 10, and art. 228 of the Code of Criminal Procedure);

(j) Articles 287-290 of the Code adopt the principle spelled out in article 227, paragraph 1, of the Constitution that hearings before a court shall be public, and stipulates the conditions for and the extent of barring the public;

(k) Under article 181, paragraph 4, of the Constitution and article 3 of the Code of Criminal Procedure, a person is presumed innocent until proved guilty by an effective sentence. Only after the sentence has been passed can a person be said to be guilty, of what offence and what the penalty is;

(1) Pursuant to article 181, paragraph 1, of the Constitution, no one may be punished for any offence which prior to its commission was not defined as punishable by law or any other legislation based on law or for which no penalty has been established.

5. These are the principles determining the rules ensuring that no innocent person may be convicted and that the accused is sentenced under the conditions stipulated by law and on the basis of proceedings carried out in accordance with the law. However, notwithstanding the solutions described above which basically ensure a democratic procedure, better solutions aimed at improving the trial law status of the accused and assuring the protection of his person should be sought.

6. To this end, the Government of Yugoslavia and the appropriate authorities are reviewing some solutions contained in the legislation in force to allow maximum protection of the accused at trial. Therefore, possibilities are being explored to upgrade certain solutions to: expand the right of minorities and aliens to make submission to the court in their own language; expand the right to countermotion in all cases where the plaintiff has offended the defendant in the same action; expand the defendant's right of defence by making it compulsory whenever the defendant is held in pre-trial detention; expand the defendant's right to contact his counsel; ensure that only evidence gathered on the basis of respect for proper procedure may be admitted as case evidence in criminal action; protect the position of the defendant in detention; reduce the number of investigative actions taken by law enforcement officers; preclude the possibility of arrest or placing the suspect or defendant in preventive detention; change the composition of first instance and higher instance court in trials for criminal offences punishable by death in such a way as to increase the number of judges sitting on the council trying such cases; secure more effective protection of citizens' individual rights as far as the implementation of investigative action is concerned, etc.

7. An important segment of the protection of the human rights of persons detained or imprisoned is the development of a safeguarding mechanism with respect to the imposition of penal sanctions. The basic assumption is that these safeguards should be regulated by law.

8. The adoption of the Socialist Federal Republic of Yugoslavia Constitution in 1974 ended the process of transferring the imposition of penalties from the federal level to the federal units. Subsequently, all federal units passed laws on the enforcement of penal sanctions and numerous by-laws - inspired by the ideas generally accepted today and by the concepts underlying the best modern enforcement systems - providing for the principles, conditions, organization and practice of the treatment of sentenced persons.

9. The introduced legislation and by-laws are based, first and foremost, on the principles of: legality, humanity and collective enforcement of sentences; social reintegration; individualization; development of personal responsibility; encouragement of sentenced persons to take part in their own rehabilitation; their obligation to work; post-penal assistance to sentenced persons; etc.

10. Regarding the enforcement of penal sanctions and their effect on human rights, particularly the rights of aliens serving prison terms in Yugoslavia, it was assessed as indispensable to undertake activities aimed at achieving an equal legal status for sentenced aliens serving prison terms in accordance with republic and provincial laws. Consequently, pursuant to the authorization contained in amendment XXXIV to the Constitution and bearing in mind the "Minimum standard rules for the treatment of prisoners" adopted by the First United Nations Congress on Crime Prevention and the Treatment of Offenders, held in Geneva in 1955, certain solutions were proposed to address the major issues related to: serving of a prison term; juvenile imprisonment; security measures (compulsory psychiatric treatment and confinement in a health institution and compulsory treatment of alcoholics and drug addicts); delayed enforcement of a penalty; suspension of the sentence; release on parole; communication with sentenced aliens in their mother tongue or in one of the official languages of the United Nations; maintenance of contacts between sentenced aliens and a diplomatic or consular representative of their respective countries or contacts between the sentenced stateless person and the representative of the State or international organization concerned; the rights and duties of persons sentenced to labour that should correspond to their psycho-physical abilities and should not be degrading; meeting the needs of sentenced persons to practise their religion; etc.

11. It is considered that the Law on the Enforcement of Penal Sanctions on Sentenced Aliens, which has been submitted for adoption, will significantly contribute to the elaboration of norms and standards relating to the conduct of judicial affairs and the human rights of imprisoned aliens.

12. In addition, to upgrade its standards in the field of human rights and to bring its national legislation into full harmony with the provisions of international treaties in this field, the Government of Yugoslavia instructed its agencies to examine the possibility of its accession to some new international instruments. In this context, and in regard to the matters to be discussed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the procedure for the ratification of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is now under way in the Assembly of the Socialist Federal Republic of Yugoslavia.

13. This does not mean that the activities of the federal Government aimed at ensuring and protecting the human rights of detained or imprisoned persons are thereby exhausted, since the developments in this dynamic field need to be continuously promoted in response to the achievements worldwide and the internal need constantly to improve the status of the individual in society by introducing new rights, improving safeguards and, primarily, ensuring the rule of law through strict application of constitutionality and legality.

14. This activity will be continued through improvement of the legislation in this field so as to ensure that the enactments having the effect of by-laws or the procedure for the implementation of provisions in the human rights field do not derogate from or diminish the already agreed and internationally recognized human rights standards. The Yugoslav Government will continue its efforts to improve and complement the system and mechanisms of human rights protection and, in that framework, the protection of the rights of persons subjected to any form of detention or imprisonment.

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